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THE  
DUCHY OF SLESWIC,  
AS REGARDS ITS  
PUBLIC LAW  
AND ITS  
LAW OF SUCCESSION.

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THE  
D U C H Y   O F   S L E S W I C,  
AS REGARDS ITS  
P U B L I C   L A W  
AND ITS  
L A W   O F   S U C C E S S I O N.

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## THE DUCHY OF SLESWIC.

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THE inquiry into the constitution of the duchy of Sleswic, and more especially into the manner in which it is connected with the duchy of Holstein on the one hand, and with the kingdom of Denmark on the other, has of late years attracted public attention.

To the publications on this subject has been added a writing, which on account of the peculiar circumstances under which it was composed, has excited general interest in a high degree.

Some time ago a committee was appointed *by royal command*, to inquire into the affairs of the duchies of Sleswic, Holstein, and Lauenburgh, relating to the succession. The conclusions to which this inquiry led with regard to the duchy of Sleswic, were put together in a writing, which, through separate editions, as well as through insertion in the public papers, has found a very extensive circulation at home and abroad.

By publishing this "report of the committee," the question of the Sleswic succession has, officially, been introduced as a matter of free investigation, and the intention which prevailed in editing the said writing, must have been that of gaining the assent of the

public to what is stated as the result of the inquiry viz., *that the duchy of Sleswic is, by virtue of the common succession according to the Royal Law, inseparably united with the kingdom of Denmark.* But we are, surely not mistaken in supposing, that assent is only to be given to that, which approved itself to be both truth and right? We consider ourselves, therefore, fully justified in endeavouring, on our part, to answer the question, What is in the Sleswic cause truth and right?

Generally speaking, the above-mentioned writing has in tone and style, preserved the even tenor of a learned research. There is, however, some blame attached to it. It does not (as might have been expected of the report of such a committee, appointed by royal command) simply put the facts together, which seem to speak for the one view or the other, and decide at last in favour of that which appears to be best founded; but it is from the beginning convinced of the soundness of one opinion, and tries to support this in every possible manner. What has been given to us is less an impartial report than an exposition, which has already taken a part, and is endeavouring to set forth and to explain everything in favour of it. The more necessary it becomes, in the stage at which the question has arrived, to submit the results of the report, and the proofs on which they are founded, to an unbiassed and thorough investigation.

We ought, likewise, not to omit remarking that the report of the committee, whose authors have had an opportunity of making full use of all the state archives, neither communicates any new and decisive facts, nor furnishes any fresh proofs, and is, therefore, in reality, nothing but a remodelled construction of the already known materials.

In inquiring into the affairs of the duchy of Sleswic, relating to the succession, it is chiefly the events of the year 1721, which are to be taken into consideration. But in order to gain a proper station for obtaining the right view of the whole case, and to establish the principles according to which the legal effect of these events is to be examined, it will be necessary, by looking back at the earlier history of the country, to recall to mind those facts, on which the public law of the duchy of Sleswic was, at that time, founded.

I.—At least, since the thirteenth century, the duchy of Sleswic was a feoff of the kingdom of Denmark. After manifold dissensions about the legal properties of this feoff, it was, through repeated declarations of the Danish kings, indisputably acknowledged to be a legitimate hereditary feoff.\* As such, the duchy of Sleswic passed, in the year 1460, to the house of Oldenburgh. With the elevation of this house to the government of the duchy of Sleswic, as well as of the counties of Holstein and Stormarn, begins a new era for the public law of the Duchy of Sleswic, with a clear settlement of the affairs, as they were to be from that time forth.

From the contents of the two documents of the year 1460, we point out the important fact that the states of the duchy of Sleswic, and of the counties of Holstein and

\* *Vide* the bill of enfeoffment of the Danish King Christopher of Bavaria, of the year 1440, the confirmation of this bill of enfeoffment by the same king, of 1443, and the re-confirmation of it by Christian I., of 1455.—*Privilegien der Ritterschaft*, p. 5, 13, 28.

Stormarn, did not accept and elect Christian I. as King of Denmark, but as lord of the above-named countries. It is, indeed, stated on this occasion that the newly-established dominion of Christian I. had been conferred on him, out of personal regard for him, and that he should not bequeath the countries to any of his children or relations : nevertheless, it is clearly authenticated that the right of dominion in the countries of Sleswic, Holstein, and Stormarn, founded on the election of Christian I., should not be limited to his person, but extend to his whole race, or to the whole house of Oldenburgh. It is to be presumed that the bills of enfeoffment presented to the Dukes of Sleswic, were composed according to the tenor of the agreement, and contained an enfeoffment of Christian I., his heirs and descendants.\* Though the states were allowed the right of electing a new lord of these countries, as often as they became vacant, still, their right of election was limited to the sons of Christian I., or, if there were no sons, to his legitimate heirs. It is expressly stated in the second document of the year 1460, as follows:—"If we, or our children, and heirs, should depart this life, and leave no more than one son, who would be King of Denmark, then the inhabitants of these countries may retain their free choice of electing the same King as Duke of Sleswic, and Count of Holstein and Stormarn ; in which case he shall be bound to confirm, improve, and swear to, all the articles and privileges, which we have granted and sealed to the above-named countries and inhabitants, and to preserve them in all their strength and

\* The bills of enfeoffment for the first dukes of the house of Oldenburgh are, to our knowledge, not extant.

power. If he should not agree to this, then the above-named inhabitants shall not be obliged to elect the same king as their lord; but they shall then choose one of our next heirs as their lord.”\*

Here, to describe the case by the law-terms now in use, the distinction between *right* of succession and *order* of succession, is very apparent. The right of succession was established for the whole house of Oldenburgh, and to the states of the duchies was only conceded the privilege (though but in a limited degree) of electing from amongst the members of the house of Oldenburgh, that person, who was to take the government of the country upon him. It is therefore justly remarked in the report of the committee,† that the right of election belonging to the states supplied the place of an order of succession. But the authors of the report have evidently not adhered to the distinction between right of succession and order of succession, in all its bearings. For in the sequel they have considered two very different things; *viz.*, *the right of succession* of all the male descendants of the house of Oldenburgh, fit to govern, and *the order of succession*, as one and the same.

Besides this, we have still to notice the erroneous assertion, that the right of succession of the members of the house of Oldenburgh to the duchy of Sleswic, as long as it was still a feoff of the kingdom of Denmark, was not solely derived from their descent; but that its efficiency equally depended on being recognised by the feoffer, and by the states. In looking over the above-cited documents, we arrive at the fol-

\* *Privilegien der Ritterschaft*. p. 62.

† P. 15, sub. vi.

lowing conclusion, that the right of succession of the members of the house of Oldenburgh to the duchy of Sleswic was solely derived from their descent, but that the actual entering upon the government of the country depended on the election of the states. The recognition of the feoffer, however, was neither required by the Oldenburgh race, as a condition of their right of succession, nor by the elected individual for establishing his right of entering upon the government of the country; on the contrary, the recognition of the elected lord by the feoffer must be looked upon as a duty of the latter, resulting from the feudal relation of the duchy of Sleswic to the kingdom of Denmark; for the feoffer could not lawfully refuse enfeoffing him, who had been elected from the house of Oldenburgh, as lord of the country. Thus the states of the duchies have considered it; and in the first privilege of Christian I., containing the regulations concerning the election of the lord of the country by the states, it is expressly said, that "Whoever shall be elected in the manner as above described, shall demand and receive his feoff from his feoffer, and do what is lawful."\* We repeat it: *The right of succession to the duchy of Sleswic belonged, by virtue of their descent, to all the members of the house of Oldenburgh; but only one of them was, according to the election of the states, to take the government of the country upon him.* This was the chief and fundamental principle, which the states of Sleswic-Holstein, and the first Duke of the house of Oldenburgh, had agreed upon.

Another principle, equally prevailing in the two

\* *Privilegien der Ritterschaft*, p. 45.

chief documents of Christian I. is, that the countries of Sleswic and Holstein shall form *one indivisible whole*, and at all times have but one ruler; as Christian I. has expressly promised, \* “*that the countries for ever shall remain undivided.*” It is well known that in the sequel neither the states nor the lord of the country have retained the principle of indivisibility in its full strength; and the divisions of the duchies, which took place afterwards, have, indeed, caused disagreements, from the consequences of which our present time has still to suffer.

Amongst the principles on which the public law of the duchy of Sleswic is founded, “*the perpetual union*” between the duchies of Sleswic and Holstein on the one part, and the kingdom of Denmark on the other, established at Rendsburgh, in the year 1533, is likewise of great importance. The undiminished validity of this treaty has, at the several changes in the public law of the duchies, which afterwards occurred, always expressly been acknowledged, especially in the patent of sovereignty of 1658, and in the peace of Travendahl, of the year 1700. This perpetual union was not only an engagement for good and friendly understanding between the contracting parties, and for mutual assistance in time of war; but it had a much higher and more general signification; for its purport was to establish for ever between Denmark and the duchies, and between the lords of the soil, *a relation firmly based on law*. Whatever dissensions might arise, should henceforth no longer be removed by means of war, but by amicable settlement,

\* *Privilegien, &c.*, p. 51.

or by the decision of arbitrators. It is these arbitrators, that were subsequently called "*Unionsausträge*," (arbiters of the union). It was, indeed, not expressly mentioned in the perpetual union that the arbiters were also to adjust the differences of the Dukes of Sleswic-Holstein between themselves; but the treaty is composed in such general terms, that there is reason to suppose the arbiters of the union were intended to form, as it were, a supreme court of justice, which was to be competent to decide all political dissensions whatsoever. Nor are instances wanting of the arbiters of the union having decided some dissensions between the Dukes of Sleswic-Holstein; at all events, the royal house at this early period continually adhered to the opinion of the more extensive competency of the arbiters of the union.\*

Since the Dukes of Gottorp, however, maintained the opposite opinion, the competency of the arbiters of the union was, in the second article of the peace of Travendahl, of the year 1700, limited to the cases expressly mentioned in the perpetual union; and the dissensions of the Dukes of Sleswic-Holstein between themselves were, consequently, excluded. But at the same time it was expressly stipulated that the differences which might in future happen to arise between

\* *Vide*, for instance, *Rechtmässige Ursachen, warum Ihro Königl. Majestät zu Denemarck und Norwegen, etc., des Herrn Herzogen zu Holstein Gottorp, etc. Hochfürstliche Durchlaucht das unbeschränkte freie Exercitium juris armorum angemasseter Weise zuzugestehen keineswegs gehalten seyn*—im Monat November, 1699; where the indivisibility of the countries, and the more extensive signification of the union is very amply maintained.

the two reigning Dukes, “should either be settled by amicable arrangement between themselves, or adjusted through the intervention of a third party, chosen for that purpose”\* *A war therefore could, even according to this more particular stipulation of the perpetual union, be as little lawfully entered upon between the reigning lords of the duchies, as between the duchies and the kingdom of Denmark.*

The divisions of the country themselves, which took place amongst the descendants of Christian I. are, in the present state of the case, of little interest; it will therefore suffice briefly to mention, that, since the year 1544, the duchies had three reigning lords, since 1582 two, viz., one who was at the same time king of Denmark, and whose race or country was on that account always, even in the duchies, called *royal*, whilst at a later period the name of (*Sleswic-*) *Holstein-Glückstadt* was also found; and one of what is called the *Sleswic-Holstein-Gottorp* line. Each of these two princes had first of all his separate portion, consisting of certain districts and other possessions, partly in Sleswic, partly in Holstein, and which was called *the private portion*. But besides this, several important rights had remained common to both, and the political unity of the country, as by law established, was as much as possible maintained. Thus, the clergy and the nobility were not divided; the diet, which they constituted together with the deputies of the towns, was common to both duchies, and to both divisions of the country. There was a joint government,

\* *Hansen Staatsbeschreibung des Herzogthums Schleswig*, p. 728.

which the lords of the soil had especially to agree upon. This joint government referred chiefly to the clergy and the nobility, who had remained undivided, but it was, constitutionally, to extend, and did extend, to all affairs of the country which were of general importance, whether concerning the private portions of the country or the common territory. The general signification of the joint government for the whole country has, indeed, frequently been questioned, and one might almost say, systematically disputed by the reigning house of Gottorp; nor can it be denied that the carrying through such a joint government according to strict principles, particularly at those times when the relation between the lords of the country took a hostile turn, was connected with great difficulties. But that a government comprising the whole country did still lawfully exist during the seventeenth century, is evident from many incontrovertible facts, especially from the various conjoint ordinances which are still extant, and which were issued for the whole country, whilst the dominion was divided.

Many declarations of the royal government, about the end of the seventeenth and the beginning of the eighteenth century, are still extant, in which it most emphatically maintains this unity of the country, putting it forth as the chief argument in defence of its proceeding against the co-reigning duke. And if the Dukes of Gottorp were continually endeavouring to set aside this communion, as it was called, and to attain to entire and unlimited independence in their districts, which endeavours were partly crowned with success, it must be confessed that this was in accordance with the views of the seventeenth and eighteenth

centuries, concerning the signification of princely power; but nothing can justify the assertion, which is to be found in the report of the committee,\* that the king has thereby acquired a right of setting aside the old treaties likewise. It was not a right of the Dukes of Gottorp, but of the countries of Sleswic and Holstein, that these should remain together undivided.

And this right referred as well to the relation of the duchies to each other, as to that of their several parts. Here again just the royal line has, in former times, most firmly adhered to the principle of an indissoluble union. We deem it expedient to cite a declaration of the same. When, in the year 1683, the duke had petitioned the Emperor of Germany for protection against the claims of his co-reigning partner, the king,—the objection made at Copenhagen to this interference was, that Sleswic did not belong to the German empire, and that even Holstein, being united with Sleswic by a perpetual and indissoluble tie, could, for that reason, not have its cause decided by the emperor.† This declaration shows, how at that time these affairs were looked upon at the court of the King of Denmark. In full accordance with this is the assertion on the part of the king, made as late as the year 1699, and maintained with the utmost decision, that the duchies formed one *corpus integrale*, which, according to the old laws, could not be dissolved.‡ We subjoin here the following statement, made in the year 1700 on

\* Page 4.

† (Adelung) Kurzgefasste Geschichte der Streitigkeiten, v. 57, (from Puffendorff).

‡ *Vide* the above quoted writing, *Rechtmässige Ursachen*, etc. in *actor. publicor. Fasc.* 4, p. 6.

the part of the Duke of Gottorp. “But we now come to the union of the duchies, according to which the two countries of Sleswic and Holstein are to form one *corpus integrale*, to remain for ever united together, and not to be separated from each other, so that the duchy of Sleswic shall, *etiam existente casu vacantiae*, not be incorporated with the kingdom of Denmark, and the one of the two reigning lords not be Duke of Sleswic and the other Duke of Holstein.”\* Just the last words are very striking. The indivisibility of the duchies was constantly adhered to in this sense, that *Sleswic had never a reigning lord for itself, and Holstein another for itself*. All the successors of Christian I. have entered upon the government of both countries through one and the same act, and never has the case occurred, nor could it occur, that one of them entered only upon the government of Sleswic, or succeeded to both duchies by separate titles.

II.—We have still to consider some other affairs, connected with the divisions of the country, which will lead us nearer to the principal subject of our investigation.

In the year 1564 the “*private royal portion*” in the duchies was again divided between Frederic II. and his brother, the Duke John the younger. Now matters took such a turn that the Duke John the younger and his descendants stood in a different relation to the country from what those princes of the house of

\* Nochmalige und endliche Behauptung des freien und unbeschränkten *Exercitii* des Schleswig-Holstein-Gottorpschen *Juris armorum*. Im Monat *Januario*, 1700, s. 61.

Oldenburgh did, who had hitherto held the government of the country, and who even afterwards remained the reigning lords of the soil. It is to be remarked that, after the death of Christian III., three sons were acknowledged as entitled to succeed to the duchies. But one of these, Magnus, was otherwise portioned off by Frederic II., and left his portion of the country to his eldest brother. The consequence was, that the Duke John the younger received only the third part of the "royal portion" of the duchies. In the sequel, the Duke John the elder having died, and his portion of the country been, first, divided between the King and the Duke Adolphus of Gottorp, the former acknowledged likewise the claims of his brother, the above-named Duke John the younger, to a third of this acquisition, and gave him for it, according to a previous agreement, several possessions, as an equivalent. The line of this house is, from its chief castle, generally called that of *Sonderburgh*, but not unfrequently the appellation of the *younger royal line* is also used.

The right of succession of this house of Sonderburgh, with regard to the private portions of the country, was most unquestionably acknowledged through the above-mentioned transactions; but the participation in the joint government depended on the consent of the states, as long as these had the right of election. John the younger laid claim to being admitted as a partner in the government of both duchies, and the two reigning lords of the country, the King Frederic II. and the Duke Adolphus, were not averse to this demand; on the contrary, they quite approved of it. The states, however, when applied to by Frederic II.

on behalf of John the younger, refused doing homage to the latter ; but for no other reason than because it appeared to them, under the existing circumstances, neither necessary nor advisable to admit of, and to do homage to, a third co-reigning lord of the country.\* Though the claim of John the younger to participate in the joint government, and to receive the homage of the states, has been much discussed, yet it has remained thus, that the duke and his line were limited to the possession of certain parts of the country, and not admitted to participate in the joint government.

These affairs, if considered in a modern political point of view, would certainly appear somewhat strange ; but they accorded well with the political views which were then prevailing, particularly in the German principalities. On the one side, the right of all the male descendants of the princely house to participate in the enjoyment of the princely dignity, and of the revenues and estates connected therewith ; on the other side, in the once firmly established territories, the endeavours and the right of the country, not to suffer itself to be entirely split to pieces, but to preserve its political unity. In consequence of this system it often happened that some of the members of the princely house, entitled to succeed, were portioned off with particular domains and possessions, whilst the chief government of the territory remained in the hands of one of the elder or otherwise superior princes. But the rights of the country were not everywhere as

\* Christiani, *Neure Geschichte der Herzogthümer*. Vol. ii. p. 397.

well protected as here. The states could, doubtless, according to the privilege of Christian I., have resisted any division whatever, at least they would not have been obliged to accept more than one reigning lord of the country, and their consenting to elect once three, and then two, could not invalidate their right. But as little was the right of succession of the house of Oldenburgh in any way prejudiced by their refusing, in the above stated case, to increase the number of the reigning lords.

It is, indeed, difficult to comprehend how the report of the committee can draw the inference that, through the refusal of the states, to admit of the Duke John the younger participating in the government, and to do him homage, the right of succession of the Sonderburgh line has remained doubtful.\* The right of succession of the Sonderburgh line, with regard to the duchies, was not at all called in question, nor could it possibly be doubted, as it had only just been acted upon after the death of Christian III. In like manner it came afterwards again into operation after the decease of the Duke John the elder, without meeting any opposition. But it is equally clear, that by the right of succession of John the younger being in force with regard to the private portions of the country, the states could not be obliged to elect a third reigning lord. Circumstances were not of the kind that it could have come to John the younger's turn in the order of succession through the election of the states, unless the states themselves had wished to make an exception to the rule. Here, too, we need only keep in mind the

\* Commissionsbedenken, p. 2.

distinction between right of succession and order of succession, to understand the above-stated events and affairs in their true light, and to see that the non-acceptance of John the younger as reigning lord of the country did not in the least affect the right of succession of his descendants. The right of succession with regard to a country, which, according to its constitutional laws, is indivisible, is in itself an eventual right, and the entitled person must always wait till the time arrives when he shall be allowed to make good his claim. In the declaration of the states of 1564 it is even intimated that, if King Frederic II. should die without male heirs, no obstacle would then be opposed to John the younger being elected as co-reigning lord.

How the committee could ever think of drawing such an inference from the above-mentioned refusal of the states, is the more surprising, as the feudal lord himself has afterwards expressly acknowledged the right of succession of the Sonderburgh line. In the treaty of Odensee of the 25th March 1579, the King of Denmark promised "the dukes of the house of Odenburgh, as many as were then living, and as would come after them (with the exception only of those who had already been portioned off, and had renounced their rights\* by special agreement) to invest them, and their descendants, with the duchy of Sleswic, and all appertaining thereto, including likewise the Island of Fehmarn, as with an hereditary feoff of the kingdom of Denmark." That this promise

\* The words "and had renounced their rights," which are, evidently, of great importance, have, in the report of the committee on the contents of the treaty of Odensee of 1579, been passed over in silence.

has also been given to the dukes of the Sonderburgh line, can the less be called in question, as King Frederick III. has still invested the dukes of the Sonderburgh line, in the bill of enfeoffment of the 22nd May, 1649, with the portion of the duchy of Sleswic they then possessed, and with a joint claim\* (*sammt der gesammten Hand*) on this duchy and the island of Fehmarn, expressly referring to the treaty of Odensee of 1579.

In the discussions of the committee on the joint investitures of the house of Sonderburgh, the remark occurs† that “all investitures with a joint claim conferred on the Sonderburgh line were, as far as the researches had been carried, without exception, connected with the actual possession of some hereditary feudal estate, and never granted to any one without his possessing such an estate;” from which the committee infers that the right of succession of the Sonderburgh line depended on the possession of a feudal estate, and would be lost as soon as the latter was no longer possessed by the line; and that, therefore, at present, when none of the branches of the house of Sonderburgh are in possession of any feudal property, their right of succession to the duchy of Sleswic must be considered as extinct. Inconsistent with these assertions is another statement, which likewise occurs in the report of the committee,‡ and according to which an agnatic right of succession appears to be attributed to the Sleswic-

\* The above expression denotes the eventual right of succession to the whole duchy of Sleswic, with which all the dukes of the house of Oldenburgh were jointly invested.—Transl.

† Commissionsbedenken, p. 19.

‡ *Ibid.* pp. 17 and 18.

Holstein dukes of the house of Sonderburgh, in case the race of Frederic III. should become extinct in the female as well as in the male line. It is, therefore, admitted that a right of succession does exist, although the time of its coming into operation be very much deferred! We shall have occasion, in another chapter, to return to this subject.

The suppositions, by virtue of which the committee disputes the right of succession of the Sonderburgh line, are not at all correct. Supposing that the joint investitures of the house of Sonderburgh had, in all cases, been connected with the possession of some feudal estate, it would by no means follow that the possession of such an estate was the condition of the efficacy of the joint claim. An investiture with a joint claim may occur in connection with the possession of a feudal estate, but just as well without it; and it is, therefore, a matter of perfect indifference whether the person invested with a joint claim possess any feudal property or not. It is, moreover, a mistake that the Dukes of Sonderburgh have been invested with a joint claim "only with regard to their possessing some feudal property." In the bill of enfeoffment of King Frederic III. of the 22nd May, 1649, all the sons of Alexander, Duke of Sonderburgh, are expressly mentioned by name, and invested with a joint claim; though it cannot be doubted that only the eldest son, John Christian, was in possession of a feudal estate, whilst the others had, according to the statute of primogeniture of this house, established in 1633, received nothing of this patrimonial estate. Lastly, it is to be borne in mind that the investiture of the Dukes of Sonderburgh with a joint claim on the duchy of Sleswic

was not the condition of their right of succession.—Till the year 1579, the investiture with a joint claim was totally unknown in the duchies of Sleswic and Holstein, it being only introduced through the treaty of Odensee, concluded in that year. Till then the right of succession depended solely on the descent, which principle has neither been abolished nor altered by the treaty of Odensee, so that the investiture with a joint claim appears to have had no other signification for the Dukes of Sonderburgh than that of affording them a greater facility in proving their right of succession. The investiture with a joint claim was, therefore, after all, not much more than a formality.\*

Such being the nature of the premises of the subject in question, the inference drawn therefrom falls of itself to the ground.

III.—The constitution of the duchy of Sleswic experienced, indeed, two important changes; first, by abolishing the right of election of the states and introducing in its stead the order of primogeniture, in the royal house as well as in the ducal house of Gottorp; and secondly, by abolishing, in the year 1658, the feudal connexion of the duchy of Sleswic with Denmark. But neither the one nor the other of these changes could have the effect of limiting, much less of abolishing the right of succession with regard to the duchy of Sleswic, exclusively belonging to the male line.

The duchy of Sleswic was under the house of Oldenburgh a male feoff; only sons or male heirs

\* *Vide Eichhorn*, deutsches Privatrecht, s. 359, note *n.*, and *Michelsen*, zweite polemische Erörterung, p. 34.

could through the election of the states be called to the succession, and since the election was always made, as by law established, for Sleswic and Holstein united, any possibility of a female succession, was even thereby excluded. The laws of primogeniture for the house of Gottorp, of the year 1608, and for the royal house, of 1650, could therefore only arrange the succession for the male line of those from whom the laws of primogeniture had proceeded.

The so-called patent of sovereignty for Duke Frederic III., and a similar one for King Frederic III.,\* granting to these two reigning lords of the country for their sons, and descendants of the male line, the liberation from any feudal connexion with the kingdom of Denmark, without mentioning the female issue at all, afforded an additional proof of the duchy of Sleswic being acknowledged as a male feoff.

For the dukes of the house of Sonderburgh, the duchy was even after the year 1658 considered as a feoff, and has subsequently to that time, as the committee itself expressly mentions, repeatedly been acknowledged as such in joint investitures. How the committee † can, with regard to these affairs, speak of the anomaly “ of an investiture remaining doubtful for an allodial country, ‡ is difficult to conceive. In as far as an investiture took place, the country was a

\* *Vide* Commissionsbedenken, p. 2.

† Commissionsbedenken, p. 14.

‡ We repeat this term from the report of the committee, though it has never been applied to Sleswic, and is certainly quite out of place here; for the abolition of feudality made the Dukes of Sleswic sovereign lords, but not the country an allodium.

feoff; in as far as feudality was abolished, the investiture ceased likewise. Is there any anomaly in that?

The duchy of Sleswic was a male feoff. A succession of the female line in the duchy of Sleswic was, therefore, from the very nature of the case, out of the question. The female succession was, on the contrary, in former times, excluded by the connexion with Holstein, and by the right of election of the states, and afterwards by the laws of primogeniture as well as by the patents of sovereignty. But from the affairs of the family, and the circumstances connected therewith, it appeared that the above-stated events did not in any way affect the agnatic right of succession of the Sleswic-Holstein Dukes of the house of Sonderburgh, in case it should one day come into operation.

The report of the committee, certainly, says\* that “since the establishment of the *descendibility* of the crown in the two sovereign princely houses of the duchies, that is to say since 1658, any claim of succession to Sleswic on the part of the house of Sonderburgh, was considered by the royal line as invalid, as long as there was still a male or female descendant remaining of the latter.” But not one word is said to prove this assertion, nor could it indeed be proved, since the contrary is as clear as the day. From the well-known occurrences mentioned in the report of the committee, would appear thus much, that King Frederic III. having established, in 1660,

\* Commissionsbedenken, p. 18. We point out the great inaccuracy to be found here as well as in other places, for the “*descendibility*” was by no means established in 1658.

the descendibility of the Danish crown in the male and female line, might have entertained the wish of obtaining likewise for the female line of his house the right of succession to the duchies; and that an attempt was really made in 1665, to induce the Duke of Plön to give his consent to an alteration of the law of succession in the duchies. But the attempt failed at that time and has not since been renewed, from which it is clear that Frederic III. had only a *wish*, but not a *conviction* founded on law, much less an *actual right*. The Duke of Plön opposed to the royal proposition, the assertion, that "if his Majesty's descendants of the male line should expire, which God forbid, then they would be succeeded by the dukes of the house of Sonderburgh, *ut ordine et sanguine proximiores*."\* Frederic III. then gave up this proposition altogether.

The reign of Christian V. also furnishes a confirmation of the principle, that in the duchies only the male line was entitled to succeed. For by extending, in the year 1691, the order of primogeniture (established in the year 1650, for his portion in the duchies of Sleswic and Holstein) to the counties of Oldenburgh and Delmenhorst, which had devolved upon him, this king evidently acknowledged, that the statute of 1650 was at that time for the duchies of Sleswic and Holstein still in full force, and that the female line of the royal house was, in the duchies entirely excluded from the succession.† This declara-

\* *Michelsen*, Zweite polemische Erörterung, p. 21.

† *Michelsen*, Ueber das Wahlrecht der Schleswig-Holsteinischen Stände, in *Zeitschrift für deutsches Recht*, III. p. 103.

tion makes it unnecessary here to enter into the particulars of the occupation of the ducal districts under Christian V. in the year 1684, which lasted till the treaty of Altona, in 1689. That this occupation did not affect the right of succession of the ducal house, is sufficiently proved by the old order of succession being again confirmed in the year 1691.

It is undeniable, that till the occupation of the ducal portion in the duchy of Sleswic, by King Frederic IV., in the year 1713, nothing had happened to cause any alteration in the order of succession of the ducal house, and that *the succession of the male line was, at all events, to the above mentioned year, an acknowledged and undoubted principle.* This is confirmed by an event of the year 1709, recorded by Hojer.\* The royal house of Poland, (at that time one and the same with the electoral house of Saxony) being descended from the female line of Frederic III., had added to its title its right of succession to Denmark; but in doing so, made the mistake of naming also the duchies." Against this, Frederic IV. caused protest to be entered, "because the right of succession of the royal princesses and their descendants, founded on the *lex regia*, did not extend to the duchies."

IV.—Before proceeding any further, we are obliged to cast another glance at the policy of the line of the house of Oldenburgh, which was reigning at the same time in the kingdom of Denmark and in the duchies of Sleswic and Holstein. Since the middle of the seventeenth century, it was almost continually en-

\* Hojer, Leben Friedrich IV., vol. I. p. 166.

gaged in quarrels with the house of Gottorp, which was participating in the government of Sleswic and Holstein, and had, on its part, entered into the closest alliance with Denmark's enemy, the King of Sweden. Through the unhappy wars with this power the King of Denmark had been obliged to abolish the feudal dependence of Sleswic, and to grant those above-mentioned patents of sovereignty; he was besides forced in the various dissensions between himself as duke, and the Duke of Gottorp, to give way, more or less, to the claims and wishes of the latter. This had left a bitter feeling of animosity in the mind of the kings, which prompted them to retaliate upon their successful and often insolent neighbours and cousins. Indeed, their policy, during the latter part of the seventeenth century, turned chiefly on this point; and again and again they tried, under one pretence or another, to take away from the Dukes of Gottorp the before-made concessions, and to limit them as much as possible in their rights and privileges. To enumerate each event in detail would be superfluous; but one important circumstance connected with this, we cannot pass over in silence. The Danish kings, especially since they had allied themselves with France, and were endeavouring to achieve their designs by the aid of the powerful Louis XIV., experienced always decided opposition and remonstrance from the emperor of Germany and several German princes, who took the part of the Duke of Gottorp, and tried to secure, or to regain for him, the possession of his once acquired rights. With regard to Holstein, the king was obliged to concede to them the right of interfering, nor could he avoid the duty of defending his

measures at the imperial diet of Ratisbon, and at the assemblies of the circle of lower Saxony. He, therefore, sought to separate Sleswic from Holstein, and kept the former more particularly in view, thinking that here he might protest against any interference of the Germans. Sometimes, indeed, he tried, as before-mentioned, to apply his manner of proceeding in Sleswic, also to Holstein, with which, as he himself said, it was connected by an indissoluble tie; but finding that he could not succeed in this, he endeavoured at least to attain his aim with regard to Sleswic.

By abolishing the feudal connection of Sleswic with Denmark, this kingdom appeared to have received an injury, which the king, in his quality of King of Denmark, thought it incumbent on him to repair. At one time, therefore, he demanded of the duke to acknowledge him as his feudal lord, at another he tried to exclude him from all participation in the government of Sleswic. Repeatedly the king occupied, in 1676 and again in 1684, the ducal portion of Sleswic, and both times only this part of the country; the last time he caused homage to be done to him in due form, as the only sovereign lord of the country.\* Just then it was, that in order to separate Sleswic in some re-

\* The assertion of Gebhardi (II. p. 2,200) that, on the 2d April 1685, the king assembled the Sleswic nobility at Gottorp, separated them solemnly from the Holstein nobility, and ordered them to draw up a document, in which they should acknowledge him as their only sovereign lord and king, and avow themselves to be subjects of the kingdom of Denmark, is without foundation. *Vide* Falck, *Das Herzogthum Schleswig*, p. 172. Even the report of the committee makes no mention of this affair.

spects from Holstein, he instituted exclusively for this country, a supreme court of justice,\* and confirmed for the first time, only the privileges of the clergy and nobility of the duchy of Sleswic.† The latter, it is true, was chiefly done because the inserted clause “in as far as they are not opposed to our sole and sovereign government of the said duchy,” did not apply to Holstein, where the government of the king was neither sole nor sovereign. In general, however, it is not to be mistaken, that the intention was to loosen the connection of Sleswick with Holstein in some degree, but only in order to withdraw the former as much as possible from the interference of the emperor and the German princes.‡ It was for no other purpose ; for it is sufficiently clear from the above-mentioned declarations, how little inclination there was on the part of the king, to set aside the political unity of the duchies and their several parts. But it is well to keep this in mind, because it may be inferred from it that, also at a later period some alterations might be made in the affairs of the duchy of Sleswic, without its political situation, its connection with Holstein, and its established law of succession, being thereby abolished or essentially modified, or even intended to be so. At the same time, every thing was tried to maintain the possession of the country ; promises were made to the emperor, if he would acknowledge and guarantee it, and to the duke even the cession of Oldenburgh was offered as indemnification.§ At the negotiation of

\* *Hegewisch*, Geschichte der Herzogthümer, II. (IV.), p. 299.

† Privilegien der Ritterschaft, p. 250.

‡ *Hegewisch*, Geschichte der Herzogthümer, II. (IV.), p. 299.

§ Geschichte der Streitigkeiten, p. 69 and 72.

Altona it was still firmly refused to give Sleswic up again ; the king reserved to himself in all points the free disposal of the country and its institutions ;\* though, according to the views of the committee, only an union of <sup>the</sup> ducal with the royal portion had taken place. But at last the king was obliged to yield, and to defer the realization of his intentions to another time. For the Duke of Sleswic-Holstein-Gottorp, having through the treaty of Altona in 1689, and through the peace of Travendahl in 1700, been reinstated in all his rights and possessions ; the crisis arrived at last in the year 1713, which actually put an end to the government of the Duke <sup>in</sup> ~~of~~ Sleswic, and obtained for the royal line of the house of Oldenburgh the sole possession of the whole duchy.

The report of the committee states† with regard to this event, that King Frederic IV. had, in March 1713, taken possession of the Gottorp portion of the duchies, and that the Gottorp portion of Sleswic had been considered as “conquered territory.” But the patent of occupation issued by King Frederic IV. on the 13th March 1713, extended to both duchies of Sleswic and Holstein, and contains no expressions whatever relating only to the duchy of Sleswic. It does not even speak of an occupation of the Gottorp portion.‡ The chief contents of the

\* *Vide* the declaration on the part of the king, presented on the 3d January 1688.

† Page 3.

‡ The words run thus: “And we herewith make known unto them that, from very important causes, we are most graciously pleased to secure to ourselves the said two duchies and the lands appertaining thereto, together with their revenues.”

patent is the order to pay the contributions and other revenues, of whatever kind they might be, no longer into the Gottorp coffers, but to transmit them all into the royal treasury of the war department. The occupation did not only affect the Gottorp territory in the duchy of Sleswic, but in like manner and in the same degree, the Gottorp portion in the duchy of Holstein.

There are, in fact, no ordinances of the period from 1713 to 1721, which concern the duchy of Sleswic alone. All measures which were taken related to both duchies; and there is nothing to confirm the assertion of the committee, that the duchy of Sleswic had been treated differently from the Gottorp portion in the duchy of Holstein, that is to say, as "conquered territory."

On the other hand, it is not to be denied, that the king had also at that time, in various ways, proved his disposition or intention to make his dominion in Sleswic permanent for the future, whilst he might have been aware of the little chance he had of retaining likewise the Gottorp portion of Holstein. With regard to this, we quote the following fact. On the same day on which the patent of occupation was issued, viz., on the 13th March 1713, the royal superintendent-general Dassow, was commissioned, through a rescript of King Frederic IV. to inspect the spiritual affairs in the Gottorp portion of the duchy of Sleswic, and ordered to alter the form of prayer in the towns as well as in the country, so as to make it agree with the prayer which had hitherto been used in the royal portion of the country.\* Such a measure could, of

\* The rescript to the superintendent-general Dassow is to be found in "Nachrichten vom Nordischen Kriege, vierte Fortset-

course, have no other consequences whatever, and the only thing which might clearly be proved through it, is the intention of the king to retain Sleswic for himself. The same appears already from a treaty with Russia, concluded in February 1713, in which the Czar promised, that "he would not hinder his Majesty from reaping whatever advantages he might one day, in making peace, be able to derive from the side of Sleswic."\* The same intention, we think, appears likewise from a writing to the emperor, who had declared in favour of the expelled duke, and to whom the king replied, that† it was certainly not his wish to extirpate the Duke of Gottorp entirely from his country; carefully forbearing, however, to speak of a restitution of things in Sleswic, and only alluding to those of Holstein; to which, it is true, the interference of the emperor, could, in the king's opinion, alone refer. But above all, the treaties concluded in the year 1715 with the King of Prussia, and the King of Great Britain, as elector of Hanover, are to be mentioned here, in which the king caused the possession and enjoyment of the ducal portion of the duchy of Sleswic to be guaranteed to himself.‡ The same thing

zung, p. 298," and in "Wiederholter Abdruck einiger Schleswig-Holstein-Gottorpscher Schriften," where the prayer itself may also be seen. The response given by the Faculty of Jurisprudence at Halle in March 1714, relating to an alteration in the prayer, and which was published in "I. H. Boehmer, *jus ecclesiast. protestant.*" Vol. III. p. 783, doubtless concerns this very case.

\* *Hojer*, Leben Friedrich IV., vol. I. p. 263.

† *Faber*, Staatskanzlei, XXVIII., p. 375.

‡ The treaties have been published, as far as they are to the purpose, in *Neue Kieler Blätter*, 1844, p. 756, (December.)

the king was aiming at in the year 1684, he now endeavoured to secure in a more decided manner.

The intermediate state of affairs in the Gottorp portion in both duchies, lasted till the year 1720, when the northern war was concluded by the peace of Stockholm and Friedensburgh. At this peace, Sweden promised not to render the Duke of Holstein-Gottorp any assistance in his contest with the King of Denmark about the duchy of Sleswic. At the same time, Frederic IV. prevailed upon England and France, through whose intercession the peace of Friedensburgh was established, to guarantee to him the quiet possession of the ducal portion of the duchy of Sleswic.

The committee appears, in its deduction, to have attached no particular value to these guarantees,\* wherefore we may, here, the better abstain from entering into any discussion about them. It is, at all events, certain that the guarantees given by England and France, did only concern the possession of the ducal portion of Sleswic, and that guarantees in general are, according to law-principles, no adequate means of changing a mere possession into a well-founded right.

V.—Of much greater importance is the measure, which Frederic IV. took in the following year, 1721,

\* The dates of the documents are very incompletely and very inaccurately stated in the report of the committee. The northern peace was signed on the part of Sweden at Stockholm on the 14th June, on the part of Denmark at Friedensburgh on the 3d July 1720, and ratified by Frederic IV. on the 23d July. The English guarantee-act is of the 26th July, and the French of the 18th August 1720. *Vide* Neue Kieler Blätter.

in causing homage to be done to him by all those inhabitants of the duchy of Sleswic, who had hitherto either obeyed the joint government, or been the private subjects of the Duke of Gottorp. This occurrence is of so great moment, that in the discussions which the report of the committee contains, it is made the chief subject and main point of investigation. We have, therefore, more especially to turn our attention to that part of the report of the committee, which refers to this event. But to obtain a full and clear insight into the whole case and its legal consequences, it will be advisable to separate the assertions of the committee from the arguments by which it sought to maintain them ; for, by so doing, we shall be better able to decide whether those assertions have really been proved or not.

The committee having mentioned the conditions of the northern peace, and the above-named guarantees obtained from England and France, goes on to refer to the homage of 1721, of which it speaks in the following manner: “Frederic IV. thought himself fully entitled, *jure belli*, to dispose of the conquered territory in favour of Denmark, and to incorporate the whole duchy of Sleswic with the latter. Nor could the king help looking on the duke rather as the sovereign of a perfectly independent country, than as his co-reigning partner, whom he was expelling.”—“Under such circumstances, King Frederic IV. considered each and all claims of the house of Gottorp on Sleswic, in consequence of its alliance with the enemy, (the purpose of which had been no less than a division of the royal territory,) as entirely extinct; through which extinction this house did not only lose the right of possess-

ing, and succeeding to the Gottorp portion, but was at the same time deprived of its eventual right of succession to the royal portion also,"\*—"By the patent of the 22d August 1721, the whole duchy of Sleswic was incorporated with the kingdom of Denmark, the king first uniting the ducal with the royal portion, and then incorporating the two united portions with the kingdom." "If the King wished to incorporate the duchy of Sleswic—and he certainly did wish it—he could not incorporate the ducal portion alone with Denmark, but was obliged to unite it first with the royal portion, in order to incorporate them both together with Denmark. This the king did, and he said that he did so."† "It was, indeed, the intention of Frederic IV., to make Sleswic a province of Denmark; but having united it as a duchy with Denmark, with which it had been connected as such for centuries, he did not realise this intention. The effect of the incorporation was therefore limited to the duchy of Sleswic being thereby subjected to the Danish law of succession, and to a sole and sovereign government, with the legal and historical consequences resulting therefrom."‡—"With regard to other public affairs of Sleswic, however, the intended incorporation has not been carried into execution. It is not, strictly speaking, part of the kingdom of Denmark; but it forms, like Holstein and Lauenburgh, (each with its peculiar political institutions,) part of the united monarchy. On the other hand, it has in common with Holstein, every thing

\* Commissionsbedenken, p. 4.

† Ibid. p. 7.

‡ Ibid. p. 9.

resulting from the union, which has hitherto subsisted between the two duchies, and been sanctioned by his majesty.”\*

In these deliberations of the committee, which, except where the context required a slight alteration in the construction, we have copied verbatim from the Report, a due distinction is made between the intention of Frederic IV. and what he carried into execution. For what would it avail to appeal to intentions, which were never realized? But in the manner of distinguishing between the intentions of Frederic IV. and their execution, the committee is neither quite clear, nor has it remained consistent with itself.

We must first remark that the committee, in speaking of the intentions of the king, does not with equal consistency distinguish between such intentions, which, perchance, he may once have entertained and pronounced, and then relinquished, and those which led him to issue the patent and to cause homage to be done to him. The former are evidently of no consequence whatever, and even the latter only in as far as they have been realized. We shall, however, just notice the former in a few words.

What we know of them we owe partly to the report of the committee, partly to some communications which a defender of the same afterwards published in the *Altona Mercury*.†

The Report touches upon this subject in No. 1,‡ where, in speaking of the consultations preceding the

\* Commissionsbedenken, p. 12 and 13.

† Extra Supplement of the 31st August, 1846.

‡ Commissionsbedenken, p. 4.

patent, it mentions a declaration of the king, entirely his own, in which he decidedly preferred the reasons for the incorporation to those that were alleged against it. These previous consultations are afterwards again referred to.\* If they are of that decided importance, as the committee itself believes, and wishes to make us believe, then it is indeed incomprehensible that it has not communicated them as fully as possible. By doing so it would, at least, have opened some fresh sources of information, since the Report supplies hardly any new facts and documents whatever. Moreover, it might have been expected from an impartial committee, that it would have given to all those whose conviction was to be led and assured by its opinion, an opportunity of judging for themselves of documents which it considered so highly important. In addition to this, the committee has elsewhere given proofs of its art of interpreting so little satisfactory, that some doubt may reasonably be entertained of its having properly understood the views and intentions of Frederic IV. and his counsellors. We might for that very reason abstain from taking any notice of these papers and documents; for it is an acknowledged law-principle that an appeal to documents without producing them can neither furnish nor support a proof. It is, however, not our sole purpose to examine the report of the committee, such as it is; we consider it of equal importance to explain as accurately as possible the real state of the case, even from the scanty communications which we have received.

As much, therefore, as we can gather from the

\* Commissionsbedenken, p. 9.

sparing information of the committee, and from the above-mentioned article of its defender, it appears pretty certain that King Frederic IV. has at one time or another distinctly pronounced his intention of incorporating the duchy of Sleswic with the kingdom of Denmark, or, as the committee better expresses it in one place,\* of making Sleswic a province of Denmark. But that this could not be lawfully effected must, even at that time, have been evident at the first glance. How often had writers on the part of the king, during the lifetime of Frederic IV., spoken of the indivisibility of the duchies, of their political connexion with each other, and of their complete distinctness from Denmark, and, in doing so, referred to the privileges of Christian I.; so that the king and his counsellors must also have been aware of this right of the country. From the various communications which have been made to us, we can likewise collect that several of the king's counsellors have spoken against an incorporation with the kingdom. In conformity with this, the report of the committee very justly remarks that† “the king did not realize this intention,” and that “with regard to other public affairs of Sleswic, the intended incorporation was not carried into effect.”

After these concessions of the committee, we shall have to take no further notice of the earlier intentions of the king, but only of those by which he was guided in the year 1721, when taking the above-men-

\* Commissionsbedenken, p. 9.

† Ibid. p. 9 and 12.

tioned decisive steps, which come now under our especial consideration. For we certainly think it still necessary to consider the intention separately from its realization, and are of opinion that the committee has wished to do so too, and has only neglected, in several places, to make a proper distinction between the earlier and the later intentions of the king.

But the intention and its realization are not the only points to be taken into consideration. There is still a third, which equally demands our attention, and which, though of great importance, the committee has not entered upon at all, viz., the legality of what was carried into execution. For it is self-evident that not all intentions, even when executed for the time, establish a true and actual right. Our examination of the case in question must, therefore, extend to the three following heads:—

1. What were the intentions of Frederic IV. in receiving the homage of Sleswic in 1721?
2. What has really been executed of these intentions?
3. What legal signification is to be attributed to this occurrence?

VI.—The intention of Frederic IV. to incorporate the whole duchy of Sleswic with the kingdom of Denmark, is reported by the committee to appear already from the hitherto known documents, viz., the patent of the 22nd August, 1721, and the formulary of the oath of allegiance, prescribed to the inhabitants of Sleswic. An incorporation is certainly spoken of in the patent, as well as in the formulary of the oath of

allegiance, and the committee is quite right in calling those copies of the patent incorrect in which the expressions, mentioning the incorporation, are wanting.\* But we think it necessary, in the first place, to distinguish between the patent and the oath of allegiance. The report of the committee supposes that the incorporation was already carried into effect through the patent. But this is decidedly against its literal sense; for it speaks only of a *resolve* of the king, and is, therefore, more especially to be considered here, where the *intention* of the same forms the subject of our investigation. For it is said in the patent, “and we have therefore *resolved* to unite and to incorporate the said portion with our own, and to cause *for that purpose* all the states of our duchy of Sleswic—— ——— to do homage to us alone.” This clearly proves that the homage was to realize what the king had resolved upon, more especially as not a word is said to intimate that he was already executing his intentions through the patent. We have, therefore, first, to consider only the patent, and to refer to the homage itself merely for the purpose of examining whether it may not perhaps throw some light upon the former.

It does by no means appear from the patent of the

\* In the copy, which is to be found in the writing of *Falck*, Das Herzogthum Schleswig, p. 86, the words in question are omitted. This must so much the more be ascribed to an error or mistake, as in the edition of *Heimreich's Nordfriesische Cronik*, Vol. ii. p. 255, a copy of the patent is contained, which renders the passage completely like the copy of the committee, so that the merit claimed by the latter, of having restored to the patent its complete text, and thereby its real meaning, does not belong to it.

22nd August, 1721, that Frederic IV. had the intention of incorporating the duchy of Sleswic with the kingdom of Denmark.

In the first instance, the incorporation did not extend to the whole of the duchy ; for the patent being only directed to the common subjects in the duchy of Sleswic, and speaking only of these and the inhabitants of the private Gottorp portion, it must have been issued merely for the common territory and the Gottorp portion. The royal portion of the duchy had experienced no alteration in 1713, nor was it, according to the clearly expressed intention of Frederic IV. to experience any in the year 1721. The patent calls that part of the country to which it referred "the hitherto ducal portion of the duchy of Sleswic," comprising not only the private Gottorp portion, but also the joint portion, that is to say, that in the government of which the Duke had participated. It is in these newly and fully acquired parts of the duchy of Sleswic that the homage was to be done, and an alteration in their political position to be introduced ; but not a word is contained in the whole patent, to intimate any intended alteration in the political condition of the *royal portion*, which was the ancestral inheritance of the royal house, and had always been undisturbedly possessed by the same ; so that there was no reason whatever to ordain anything regarding its political position, or the public affairs of its inhabitants.

The intention of the King with regard to the ducal portion of the duchy, is announced in the following words : "*And we have, therefore, resolved to unite and to incorporate the said portion with our own.*" One

would think that the words in themselves are clear enough, and that nothing was intended by the king but the union of the newly acquired parts of the country with the royal portion of the duchy of Sleswic, so as to form together one undivided whole.\* The expression refers only to an incorporation of the ducal portion, which the king had in view, and the measures taken to realize this intention were limited to those parts which the king had hitherto either not possessed at all, or at least not with the sole sovereignty thereof.

If the king points out that the homage prescribed to the hitherto common subjects was to be rendered to himself *alone*; if he calls the relation to be established between himself and these parts of the country the *only* hereditary government; and again, if he calls himself, in regard thereto, the *sole* sovereign lord of the country, it is in perfect agreement with the above, and denotes the new order of things as being completely like that which had hitherto taken place in the royal portion of the duchy, and which was just then being established throughout the whole duchy, by the exclusion of the Duke of Gottorp.

In the second instance, it must be sufficiently clear from what we have hitherto said, that an incorporation with the kingdom of Denmark is not spoken of in the patent, nor even hinted at by a single word. The kingdom of Denmark is not named as the country

\* Thus, in the above quoted writing, published on the part of the King, it is said of the termination of the first division (Actor. publ. fasc. 4, p. 25): "Whereas the conditions of the division expired with the extinction of the posterity of the before-named King, the two portions of the country were *re-consolidated into one body*."

with which the incorporation was to take place ; it is not even mentioned in that part of the document ; and it is indeed almost impossible to conceive how it could have entered the mind of any one to introduce it here, where it neither is named, nor could be named, because it had nothing to do with the affair.

The committee has, nevertheless, endeavoured, by an interpretation of the most extraordinary kind, to deduce from the patent of 1721 the very opposite opinion. The above quoted sentence, in which the king declares that he had resolved to unite and to incorporate the ducal portion of Sleswic with his own, the committee has thought proper to understand thus, that he intended to incorporate the whole duchy of Sleswic with the kingdom of Denmark. Such a conclusion the committee could only arrive at by supplying a great many things, of which not a word is said in the patent, that is to say, by means of an interpretation which will enable any one to convert even the clearest sentence into whatever he pleases. We copy from the report of the committee the following most singular passage :\* “ Through this patent the whole duchy of Sleswic was incorporated into the kingdom of Denmark. In order to perceive this, it is only necessary to read the words, “ to unite and to incorporate the said portion with our own,” as they ought to be read, viz., to unite the ducal with the royal portion, and to incorporate (it) with (i. e., together with) the royal portion. The meaning was, of course, to incorporate the two united portions into the kingdom of Denmark.” The committee must, indeed, have

\* Commissionsbedenken, p. 7. ’

fancied strange readers, who would be taught reading in such a manner! it must have very peculiar ideas of the way in which documents ought to be interpreted to come forth with such assertions! And how weak and destitute of sound proofs must be a cause that requires to be supported by such arguments!

The words "and to incorporate" can, according to the construction and natural interpretation of the sentence, only refer to the ducal portion, nothing whatever being said in the patent of an intended incorporation of the royal portion. To be fully convinced of this, we have only to remind the reader of the usual custom of joining together synonymous words and phrases in the language of documents. What intelligent person can have any doubt of the expressions "to unite and to incorporate" belonging immediately together? Who does not see at the first glance, that they denote one and the same act, the latter word merely strengthening the former? If the words were to be understood differently, that is to say, if they were to denote two essentially different acts, viz., the union of the ducal with the royal portion, and the incorporation of the two united portions with the kingdom of Denmark, it would have been necessary to name the whole duchy of Sleswic after the words "to incorporate," in order to express what was intended to be incorporated. But nothing of the kind is mentioned in the text.

If the committee tries to support its interpretation by remarking\* that "the duchy of Sleswic could not in any other way be incorporated into the kingdom of Denmark, than by first uniting the ducal with the

\* Commissionsbedenken, p. 7.

royal portion, in order to incorporate them both together into Denmark," and that "the parts of the country which formed the portions of the king, and of the house of Gottorp, had already been incorporated with the duchy of Sleswic, as long as the latter had existed, and could, for that very reason, not again be incorporated into each other, but only into Denmark;" the justness of these remarks is as much to be denied, as it is impossible to perceive, even if they were true, how any thing might be gained thereby for the right comprehension of the patent. For, in the first place, there is no reason why both parts of the country could not, at the same time, be incorporated with the kingdom of Denmark without having been previously united; and, in the second place, it is not mentioned at all that the parts of the country were to be incorporated into each other; it is, on the contrary, clearly expressed that only the ducal portion was to be incorporated. Nor does the grammatical construction admit of any other explanation than that the ducal was to be incorporated with the royal portion, so that the former should, as such, altogether cease to exist, and the whole duchy form, henceforward, one undivided territory. To this explanation the committee objects that it is not in agreement with the idiom of the German language, a country not being incorporated "*with,*" but "*into*" another. But we must appeal to the usual custom, in joining together two verbs, relating to the same substantive, of not regarding, whether the second verb require another preposition, or not; but of simply joining it to the first.\* This may be

\* It is, however, to be remarked that in the Danish language the expression "*indlemme med*" is not unfrequently used. *Vide*, for

called an incorrectness of style ; but it is completely sanctioned by usage, and in itself so very trifling if compared with that which the interpretation of the committee would imply, that it is, indeed, to be wondered at how, after such an example, the committee may enter into any grammatical consideration whatever. For, according to its opinion, the preposition *with*, in the words “ *with our own*,” is not only to relate to the verb “ *to unite*,” so as to denote the part of the country with which the union is to take place ; but, at the same time, to have the signification of “ *together with*,” in reference to the following verb “ *to incorporate*,” which must appear to the critic as a gross violation of the rules of the language, and to the lawyer as an evident defacement of the law.

Besides, if this be the right interpretation, no mention whatever is made of the country into which the incorporation was to ensue, and it is left to our own imagination to supply it. But can any one seriously suppose that such an omission has really taken place.

The committee, to maintain its opinion, points out a passage in the patent of 1721, in which the king declared that he had been induced “ to re-possess himself of” the Duke Charles Frederic’s portion in the duchy of Sleswic “ as an appurtenance, unjustly torn away from the crown of Denmark in troublous times.” But it is to be remarked that this passage is only to be found in the historical part of the patent, and that, even here it is not said that, the ducal portion had been taken possession of for the crown of Denmark ; but

instance, the translation of *Højer’s* public law, p. 41, where the words “ *at indlemme det med Danmark*” occur in a passage, treating of these very events. *Vide* also p. 48, n.

only that in former times it had unjustly been torn away from it, which evidently refers to the abolition of feudality in the year 1658. But where the king speaks of his actual intention, neither the crown nor the kingdom of Denmark is mentioned.

If, however, the committee should be of opinion (although it has not exactly pronounced it) that the patent ought to be explained from the formulary of the oath of allegiance, where it is said that the king incorporated the ducal portion with "his crown," this is by no means to be granted absolutely. For in other respects also the two documents differ essentially from one another, which will be shewn hereafter ; but more especially here, where the king speaks of what he has resolved upon doing, it appears highly necessary not to add anything to the text. Serious consultations are known to have been held concerning the measures which were about to be taken ; the king had made up his mind not to realize the intentions he had formerly entertained ; it is, therefore, to be supposed that he clearly expressed his final and actual intention which he openly announced to the country, and to all the powers of Europe (for the patent was published at the same time), as his resolution. We will not at present anticipate the inquiry into the signification of the word *crown*, but we most decidedly protest against the committee introducing here the kingdom of Denmark, of which no mention is made by the king himself, and which was not in any way concerned in the event that occurred entirely within the limits of the duchy of Sleswic.

From two accounts of this event, which were written at the time it occurred, it appears that the cotemporaries

also considered it only as a union of the ducal with the royal portion of Sleswic. The "*European Fame*" of the year 1721,\* where a short extract is made from the contents of the patent, says, "that his Majesty had thought proper to take possession of the said duchy of Sleswic, in order to unite it for ever with the royal Holstein." This is still more clearly expressed in the "*Mercure historique et politique*" of the same year, in the number for September,† where we find the following statement:—" *Le préambule de l'acte pour l'hommage porte entre autre, que Sa Majesté Danoise a jugé à propos, de s'emparer du duché de Sleswyck, pour l'incorporer à perpétuité au duché royal de Holstein.*"—Holstein denotes in both places the united principalities of Sleswic and Holstein, in which sense it was frequently used at that time; and the meaning is, that the ducal portion had been united, and incorporated with the royal portion of these principalities.

By comparing the patent of 1721 with that issued in 1684, when a similar union of the ducal with the royal portion was established, the committee has endeavoured to prove, that in the year 1721 something different was intended from the year 1684. But by merely comparing the contents of the patents, independent of the oaths of allegiance, we cannot, indeed, discover any real difference. The two patents do not, however, relate to one and the same case,‡ and therefore the words certainly differ essentially. The committee thinks it of great importance that neither the

\* Vol. CCXLI. p. 1002.

† VI. 5.

‡ Very different from the patent, the conclusion of which the report of the committee communicates (p. 8), is that of the 28th June, demanding the homage, and comes much nearer to the patent of 1721.

word "incorporate," nor any mention of the former relation of Sleswic to the crown of Denmark, is to be found in the patent of 1684. But both circumstances are of very little moment, and have already been discussed in the foregoing pages.

With regard to the former relation of Sleswic to the crown of Denmark, we need here only repeat the remark that, its mention in the patent of 1721 occurs only in the explanatory or historical part, but not where the king speaks of his actual intention.

As for the word "incorporate," it has already been observed, that it is immediately connected with the preceding verb "to unite," and that its purport is to set forth this union more emphatically. But we too are inclined to suppose that this word has not been used quite accidentally as it were, and without any particular signification; but, that it was meant to convey some distinct idea. However, this idea was not to incorporate the duchy of Sleswic with the kingdom of Denmark (such an important, and wholly unjustifiable measure, would, surely, have required more explicit words and means!) but, to unite the ducal with the royal portion more firmly and more permanently than it had hitherto been done. More than once this union had been attempted, but as often dissolved again; now, Frederic IV. wished to retain his acquisition, to exclude for ever the claims of the dukes of Gottorp, and to secure to himself, for the future, the sole sovereign possession of the duchy. Not being able to change the country into a province of Denmark, he did as much as he could; he united the ducal portion as closely as possible with his own, and denoted this union by the word "incorporate,"

which was a favourite expression at that time.\* We must repeat that the words themselves do not permit us to think of any thing but the royal portion, with which the incorporation was to take place. But whether it was, perhaps, not quite unintentionally that this has been expressed with a slight incorrectness of style, and that the word “incorporate” has been placed thus by itself at the end of the sentence without any further addition,† we will not take upon us to decide. Even in this case, however, we maintain that it can only have been done to give greater strength to what was already expressed by the word “unite,” and that the kingdom of Denmark remains, at all events, quite out of the question.

It would almost appear as if the committee had been at a loss where to find reasons for its view, for it has not disdained to copy, verbatim, a passage from *Hojer's* life of Frederic IV., in which mention is made of an altered position of the Sleswic arms in the royal shield. The passage is as follows‡: “King Frederic having, by that time, become the sole sovereign of the duchy of Sleswic, and completely united its possession with his sceptre, thought proper to remove the Sleswic arms from the centre of the shield, where they had hitherto occupied the first place, into the upper part amongst

\* In a former declaration King Christian V. has denoted his proceeding by the word “consolidate,” which was likewise intended to express something more than merely to unite. *Vide* the royal declaration of the year 1688: “To take possession of the ducal portion of the Duchy of Sleswic, and to *consolidate* it with our own.”

† In the original the words run thus:—“*Selbigen Antheil mit dem Unserigen zu vereinigten und zu incorporiren.*”—Transl.

‡ Vol. II. p. 53.

the sovereign countries and those provinces which were situated without the limits of the Roman Empire; thus leaving the centre of the shield only to the three principalities of Holstein, Stormarn, and Dithmarschen, belonging to Germany, and the lower part to the counties of Oldenburgh and Dölmenhorst. So it remained till the death of King Frederic, when it was again altered and the former arrangement of the whole royal shield restored."

With regard to this account of the historian Andrew Hojer, it is to be remarked, that he does not here assert that an incorporation of the duchy of Sleswic with the kingdom of Denmark had taken place; nor could he, indeed, assert this, since it is well known that in his lectures on the public law of Denmark and the duchies, he has said the very reverse, viz., that in the year 1721, no incorporation of the duchy of Sleswic had taken place.\* It is, moreover, clear that an incorporation with the kingdom of Denmark, would be incompatible with the expression of "King Frederic having, by that time, become the

\* Hojer's *Jus publicum*, or public law of Denmark, Norway and the Duchies, published by *Bredsdorf*, at Christiana, 4to, 1783, is only a translation of a Latin manuscript, badly written by a student from his lectures at college, and of so little value that the work is quite unworthy of such a man as Andrew Hojer. We shall, however, notice some of the remarks contained therein. P. 41, Hojer says, concerning the duchy of Sleswic, that the king had certainly the right to incorporate the duchy with the kingdom of Denmark; but that, to effect this, a distinct declaration of the king to that purpose would be required, which till then (i. e. in the year 1737 or 1738, when the lectures were held) had not yet appeared. It was another question, whether such a measure would, or would not, be advisable.

sole sovereign of the duchy ;” and from the author’s remark, that the Sleswic arms had been placed amongst the sovereign countries, it would almost appear that he considered Sleswic more as a sovereign country, than as an incorporated province. If, Hojer observes, that King Frederic IV. had completely united the possession of the duchy of Sleswic with his sceptre, he speaks of something different from an union with the kingdom of Denmark; for the word “sceptre” denotes here, according to the style of those days,\* the whole of the countries, under the dominion of king Frederic IV; and the sentence evidently refers to the exclusion of a participator in the government of the duchy of Sleswic. The expression of “the king having *completely* united the latter with his sceptre;” implies, that part of the duchy had already been under his sceptre before that. Besides, no authentic declaration of Frederic IV. being extant, concerning the reasons which induced him to make the alteration in the royal shield, it would, indeed, be going too far, to lay any great stress on the above account of the historian. At all events, thus much is certain, that in the statement of Hojer the distinct idea of an incorporation is not expressed, and that at Copenhagen, the alteration in the shield, made under Frederic IV. cannot have been considered of any great importance, since after the death of this king, the former arrangement of the whole royal shield was restored.

Glancing over the whole discussion, as far as it has hitherto been carried on, we may pronounce as its

\* *Vide* the Appendix, on the signification of the word crown.

indubitable result, that the committee has not succeeded in proving its assertion, that Frederic IV. has entertained and expressed the intention of incorporating Sleswic with the kingdom of Denmark.

It would be another question, though not raised by the committee, whether the king had declared it to be his intention to alter the succession in the duchy of Sleswic, and without incorporating it with the kingdom, and subjecting it to the royal law, to make it, notwithstanding, dependent on the order of succession, prescribed by the latter. We speak here again only of what the king himself has clearly pronounced as his opinion. The committee does not say that according to the documents, to which it had access, the king had, in abandoning his former plans, retained this idea; nor do we know of any other communications, from which this might be inferred.\* We are here, on the contrary, more than ever obliged, to confine ourselves to the patent in which one would imagine, that the king would completely and distinctly express his intention. And, indeed, in the main point, he has done so, by saying, that the hitherto common subjects should render him the oath of allegiance, as their now sole sovereign lord, but those, who had hitherto been the subjects of the Duke of Gottorp, as their sole sovereign lord. But he does not add another word concerning the nature of the

\* At all events, we cannot consider as such, a speech of *Breitenau*, the former president of the German Chancery, communicated in the above-quoted article of the *Altona Mercury*; nor do we know it precisely and completely. What has been published proves nothing for the establishment of the succession according to the royal law.

oath, and the successors to whom it was to extend. The words "sole sovereign lord" have already been discussed; they refer to the position of Frederic IV., as duke of Sleswic; but do not apply to him as absolute and hereditary king of Denmark, to denote whom, the royal law makes use of very different words from the above, which belong more especially to the public law of Sleswic.\* Besides, some stress is to be laid on the word "*now*," which occurs in the first part of that passage, and which is also used by Hojer; lord of the country, and sovereign lord of the common subjects the king had already been before; but *now* he had become the *sole* lord. This, and nothing more, was the change which had taken place, and with regard to this, and only this, the king demanded a new homage. He has, therefore, clearly enough pronounced his intention as to the oath of allegiance, which was to be taken, though he has certainly added that the common subjects should be more particularly informed of his most gracious intention in this respect, and the inhabitants of the private Gottorp portion of his most gracious will. But surely this intention and this will could not be in opposition to all that had preceded; it was a matter of course that they were to agree with it.

What Frederic IV. intended in the year 1721, will now appear in a clear light. He wished to exclude the duke of Gottorp from all participation in the go-

\* We need scarcely observe to the intelligent reader, that the word "*sovereign*" whenever it is applied to the duchy of Sleswic, or to any other country at that time, refers only to the abolition of the feudal dependence of the same, but not to the relation of the lord of the country to his subjects.

vernment of the duchy of Sleswic, to unite the ducal districts, which he had occupied, with his own portion of the country, to secure their permanent possession to himself, and to receive homage as the now sole lord of the country. These are the intentions which he pronounced in the patent of the 22nd August, 1721. And now we shall see how far these, his intentions, were realized through the oath of allegiance.

VII.—With regard to the act of homage the committee first \*observes, that for the acknowledgement of the sole sovereignty in the royal portion no local homage would have been necessary. This is quite right; for the sovereignty in this part of the country was acknowledged since 1658, and could not by any means be doubted. But the same may be said of the *succession* in the reigning house, which was settled for the royal portion in the year 1650, by the statute of succession of Frederic III., which, according to his own words, was to be “an everlasting law of our royal line of our princely house of Sleswic Holstein.”† If, therefore, instead of the succession, established by this law of primogeniture, another succession was to be introduced for the royal part of the country, this ought to have been openly declared; the intention of altering the succession in the royal portion ought to have been clearly pronounced, and ought to have been carried into effect. But no trace of all this is to be found. We have already remarked, and we repeat it here once more, that the patent of the 22nd August,

\* Commissionsbedenken, p. 10.

† *Samwer*, Staatserbfolge, p. 15.

1721, was not issued for the royal portion of Sleswic at all, that it had no reference whatever to its political position, and could not, therefore, have any legal effect on the affairs of this territory.\*

The committee, however, is endeavouring to prove that an alteration in the succession has taken place ; but the reasons for this assertion are incredibly weak.

It is alleged first, that, “ with regard to the succession, the statute of succession coincides with the royal law, excepting the order of succession for the female descendants of Frederic III., contained in the latter,” and that the royal law was merely a “supplement” to the statute of succession. A strange supplement, indeed, by which the former law is completely abolished ! The contents of the statute of succession consisted by no means only of a regulation

\* One circumstance, which, to our knowledge, has not yet been pointed out, we shall notice here in a few words. The patent decidedly relates only to the hitherto common subjects, and to those of the Duke of Gottorp, and proclaims how they were to be disposed of, and in what manner the oath was to be taken by them. Not a word about the royal subjects, by whom the oath was, consequently, not taken. Nevertheless, the king says, that he would “ cause, for that purpose, ALL the states of his duchy of Sleswic, as clergy, nobility, citizens, inhabitants of boroughs and villages, and other subjects, to do homage to him alone, through certain commissaries, thereunto authorised and appointed.” Strictly speaking, therefore, he has done even less than he himself had found necessary for the purpose of establishing a real political unity of the duchy of Sleswic. If, to attain this end, he has, indeed, thought it requisite, to receive new homage from the royal subjects, it can only refer to their position being so far altered, as any possibility of their being subjected to a joint government, was now for ever precluded.

of the succession amongst the male descendants, but it ordained at the same time the total exclusion of the female line, which, according to the royal law, precedes the agnati of the house of Oldenburgh. This relation of the two statutes to each other, demanded a declaration that the older statute was to be abolished; a declaration which was never made.

The committee says, secondly, that "there was no occasion for publishing the royal law, in order to make it valid for the succession." Considering the manner in which family-settlements and statutes of inheritance were treated at that time, we can make no objection to this assertion; for it was, indeed, the rule that family-settlements and statutes of inheritance were not at once formally published, but only when a case occurred, in which they might be of any practical use. Nevertheless, this assertion of the committee is, for our present case, of no consequence whatever. For although a statute of succession did not require any immediate publication, it was, at all events, necessary that it should *exist*. But for the duchy of Sleswic, and even for the royal portion of it, the royal law had no legal existence whatever, neither in the one quality nor in the other; it required, therefore, at least a declaration, that the royal law should, as statute of succession, extend over the royal portion of Sleswic. A declaration to this effect has never been made, it has not even been asserted by the committee. Every reason, therefore, is wanting for applying the decrees of the royal law relating to the succession, in any way, to the royal portion of the duchy of Sleswic.

The committee, in order to prove the establishment

of the royal law, as statute of succession, in the royal portion of Sleswic, asserts, thirdly, that at the homage of 1721, "the clergy and nobility had appeared as representatives of the states of the whole duchy, in as far as, in connexion with the great landed proprietors, a representation of the states of this duchy, as a political country,\* was still possible." But this apprehension of the affair is evidently founded on a mistake. The great landed proprietors, who were not of nobility, had no share in the representation of the states of the duchies; nor did the clergy, the nobility, and the possessors of large estates, according to all documents, in any way appear in the quality of representatives; they did homage as single individuals, as hitherto common subjects. Only at a regular diet (and according to the constitution of those days, the duchy of Sleswic had no *separate* diet at all, but only one in common with Holstein†) the clergy and nobility could have appeared, together with the citizens, as representatives of the whole country. But if they had really been such, why did they not at the same time represent the hitherto ducal portion of the duchy of Sleswic? Why was it still thought necessary

\* This expression is literally copied from the report of the committee, which probably meant to say, "political body."

† To the strangest assertions of the committee belongs also the following, (p. 10): "History had prepared the abolition of the old Sleswic-Holstein diet, and the declarations of sovereignty completed it." We doubt whether a person well acquainted with history and the laws, will be able to find any sound sense in these emphatic words. By the declarations of sovereignty can only be meant the documents of 1658; for there are no other in our country. But at that time, the abolition of the diet was by no means completed, and the committee itself speaks of the last diet of the year 1712.

to cause homage to be done in the several districts of the private Gottorp portion, whilst in the royal portion nothing of the kind took place?\*

From all these facts and considerations it appears that in the year 1721 the royal portion of the duchy of Sleswic did not, and could not, experience the least alteration in its public law, or in its law of succession. This result is of the greatest importance; for the ducal portion of Sleswic, which the King had taken possession of, being united with the royal portion, and intended to form, together with the latter, one undivided territory, it must reasonably be supposed that in the joint portion of the country and the private Gottorp portion no alteration can have taken place, which would be in opposition to the then existing political law of the whole duchy.

According to the opinion of the committee, however, the succession of the royal law was established through the homage rendered, in 1721, by the common and private Gottorp subjects. This alteration is said to have been effected partly by means of the supposed incorporation, partly by the oath of allegiance being rendered to Frederic IV. and his royal successors in the government, *secundum tenorem legis regiæ*. Both points deserve a separate consideration.

The subject of our present inquiry obliges us to leave the patent, and to turn to the oath of allegiance, through which, according to the clearly expressed in-

\* According to the above remark (*vide* p. 53) it was, perhaps, here too intended, but not executed; that is to say, it was thought necessary, though not carried into effect. It was, however, not thought necessary for the sake of establishing the royal law or its succession, but for reasons much inferior.

tention of the King, the incorporation was to take place. If the committee believes that the incorporation was already carried into effect through the patent, we are certainly of a different opinion, and must refer the reader to what has already been said of the contents of the patent, which, for the question now under consideration is of the greatest importance. The patent, as has been shewn, does not at all mention an incorporation with the kingdom of Denmark, nor an alteration of the succession. The only question, therefore, is, whether the one or the other was, nevertheless, brought about through the homage.

Although it must be allowed to be most probable that only so much was carried into effect as the King had previously announced as his intention, and that, afterwards, nothing different from what had before been proclaimed, was brought about; still it requires a careful investigation into the sense of the words which are to be found in the formulary of the oath of allegiance, to see whether they convey the idea of an incorporation with the kingdom of Denmark, or of an alteration of the succession.

The construction of this oath of allegiance, taken on the 3rd and 4th September, 1721, tends only to confirm our former remarks on the incorporation; for here too it is said in the beginning that the King had been pleased "to unite the hitherto ducal portion of the duchy of Sleswic with his own." It is, therefore, at all events, the ducal portion only that underwent an alteration, since even the oath does not mention that anything had been, or was to be, done with the royal portion. It is certainly added, that the King "had for ever re-incorporated with his crown" the

hitherto ducal portion of the duchy of Sleswic, “as an old appurtenance torn away from it *injuria temporum*.” But it is utterly unfounded, and in no wise to be justified, to consider the expression, “his crown,” as synonymous with “the kingdom of Denmark.” Even if the expression had been “the crown of Denmark,” there would still be an essential difference. But here again, the committee calls to its aid the documents of the previous consultations, which, although frequently referred to, have, nevertheless, not been produced, and have hitherto remained unknown. It has, however, already been observed, and need not here be repeated, how little is effected by such a reference. If those documents speak of the intention of the King to make Sleswic a province of Denmark, this intention has afterwards been given up, and cannot possibly contribute anything towards explaining the expression which has here been used. The word “crown,” as well as the word “sceptre,” which is used by Hojer, is evidently nothing but a figurative expression for the whole of the royal dominions, of whatever kind and description they might be. We shall treat more fully of the signification of this word in a separate appendix, and shall show how often it has been used in this general sense; we shall particularly adduce some instances, in which countries belonging to the German empire are said to have been incorporated with the crown of Sweden, though their political position in the German empire was thereby not in any way affected; we shall even prove that the royal portion of Sleswic and Holstein was already, before the event of 1721, described as appertaining to the crown of Denmark, whilst no one, not

even the committee, has ever entertained the least doubt of this territory being, then, in every respect separated and divided from the kingdom of Denmark, and having only one and the same reigning lord. The figurative and general expression of "crown of the country," has almost become synonymous with the king of the country. But if a sovereign has several countries and dominions, he is always, even with regard to his other possessions, spoken of by his higher title, chiefly by that which is derived from a kingdom; and as the duke of Sleswic and Holstein, who was at the same time king of Denmark, was regularly called after this, his higher dignity; as his private portion of the duchies went by the name of the royal portion, or the portion of the king of Denmark; in like manner his possessions were spoken of as possessions of the crown of Denmark, which expression was used with still more reason whenever it was meant to denote the whole of the countries under his dominion.

The present discussion affords us a good opportunity to point out some other circumstances, the consideration of which appears necessary for the clear comprehension of these events.

The end of the seventeenth and the beginning of the eighteenth century, was the time when the personality of the sovereigns of Europe became more and more conspicuous in all political and public affairs; when the saying attributed to Louis XIV., "*l'état c'est moi*," seemed to be verifying itself in the most decided manner. The rights of the states, of the corporations, and of the people in general, gave, or were to give, way to the sovereign and absolute government of the princes; and all the diversities which resulted from

nationality, territorial independence, rights of the people, and various other causes, were obliged to yield to the unity which was, often by the merest chance, established through the sovereign. These diversities were not abolished; they were, on the contrary, in most cases at least, allowed to continue; but they were made subordinate to the idea of unity, which seemed to be represented in the person of the sovereign. The expression, "united monarchy" or "state," was then not as common as it is now; instead of which the word crown, or some other figurative expression, was used, to denote a unity of longer duration than the age of man. This unity was sometimes, indeed, by law established, chiefly in France; much less in those countries which were united under the reigning houses of Spain, Austria, Sweden, and others; least of all, perhaps, in those which were governed by the King of Denmark. The circumstance of Holstein belonging to the German empire, the twofold, and in some parts joint, government of Holstein and Sleswic, and the totally separate constitution of the kingdom of Denmark and Norway under the royal law, were most decided obstacles to a closer union. Nevertheless it happened even here that the whole of the countries, which were governed by the King, and which, in foreign affairs, were usually not distinguished from one another, was considered as a unity, though not a necessary one. We shall quote here a passage, which will explain the above. In a Memoir of the Elector of Brunswick, at the beginning of the eighteenth century, it is said,\* that at the peace of Westphalia,

\* *Faber, Staatskanzlei*, xxix. p. 334. .

Sweden received the territories of northern Germany, more especially Bremen and Verden, "in order to keep Denmark the better in check, and to surround the said *crown* more completely through the territory of Bremen." This has no sense, unless Holstein and Sleswic were included in Denmark; though it need not be remarked that there was at that time between these duchies and the kingdom of Denmark no other political connexion whatever than that established by the treaties of union.

We do not think that by this discussion we have digressed from the main question; for after this it will not be surprising that the King of Denmark also, though well aware of the difference of his countries with regard to their political position, considered them occasionally as a whole, and denoted them as one territory, united under him and his successors. It will, more especially, be found very natural that, according to the idiom of that time, he should speak of his *crown* in this sense.\* We are, therefore, cer-

\* To prevent all misunderstandings, it may here be observed, that the expression, "*crown*," does not refer to the *ducal* crown of the king, as some have supposed; for the word is only used with reference to a country to which, or a sovereign to whom, at least a kingdom belongs. Should it, however, be asserted that the expression, "*crown*," must refer exclusively and solely to the crown of the kingdom of Denmark, because of the following words, "as an old appurtenance, torn away from it, *injuria temporum*," and the corresponding passage in the patent, "as an appurtenance, unjustly torn away from the crown of Denmark in troublous times," we certainly admit that the latter words do not allude to the divisions of the duchy of Sleswic, but maintain that they refer above all to the abolition of feudality, as has already been observed on a former occasion (*vide* p. 43). It was formerly a very common expression that Sleswic was a feoff of the *crown* of Den-

tainly of opinion that the words, "to incorporate with the *crown*," have not been used in the formulary of the oath of allegiance without some particular meaning. They convey rather more than the corresponding passage of the patent; for there, as we have seen, the incorporation related only to the duchy of Sleswic, and more especially to the royal portion of it; whereas here it is the whole of the dominions, governed by the King, with which the country is said to be incorporated. But, at the same time, it is as clearly and distinctly expressed as possible with what particular part the closer political union was to take place, viz., with the hitherto royal portion. Thus everything is in perfect agreement with the demands of the law, and the historical relations of the time. But an incorporation with the kingdom of Denmark is quite out of the question.

mark. Besides, the endeavours of the Dukes of Gottorp to separate their part of the country from the royal portion, may here have been alluded to. But should it be supposed, that, because the kingdom had received an injury, through the abolition of feudality, the advantage must now have been equally on its side, this does not by any means follow. For, in the first instance, incorporating the country with the kingdom, would have been a different thing from restoring its feudal dependence. In the second instance, the supreme feudal power was pre-eminently a right of the sovereign, and, according to the political views of the time, it could not but be considered as a sufficient compensation if the sovereign now, though in another quality, required the complete possession of the country. He had lost one right and had gained another, and in referring to this he used in both cases, without hesitation, the word *crown*. In as far as the royal portion itself was, before this, considered as belonging to the crown, the Gottorp portion was, indeed, when separated, "torn away" from it, for which the present union was a full and complete satisfaction.

In viewing the case as we do, we get rid of all those doubts and inconsistencies in which the committee has become entangled, and from which it is in vain endeavouring to extricate itself. In one place it says,\* that “the whole duchy of Sleswic was incorporated into the kingdom of Denmark;” in another, that “with regard to other public affairs of Sleswic, the intended incorporation was not carried into execution.”† But by these “other public affairs” must be meant, according to the view of the committee, every thing, except the succession. It says,‡ “the effect of the incorporation was, therefore, limited to the duchy of Sleswic being thereby subjected to the Danish law of succession,” and adds, “and to a sole and sovereign government, with the legal and historical consequences, resulting therefrom.” The latter words are such as the committee appears to be rather fond of; they seem to include much, though, in reality, they contain nothing. As for a sole and sovereign government, it did not require an incorporation with the kingdom of Denmark, to establish it; for the duke was already *sovereign* since the abolition of the feudal system, in the year 1658, and the *sole* lord of the country he became as soon as the Duke of Gottorp was excluded. For that very reason he called himself so already, in the year 1684, when, according to the remarks of the committee, no incorporation took place. In the same year too, King Christian V. already confirmed the privileges for the duchy of Sleswic by

\* Commissionsbedenken, p. 7.

† Ibid. p. 12.

‡ Ibid. p. 9.

themselves, which separate confirmation cannot, therefore, as the committee supposes, have been a consequence of the events of 1721, at least only in as far as the same thing happened again in this year, which had happened once before, in 1684, viz., an union of both portions under one sovereign government, whilst Holstein remained a divided feoff of the German empire. It is of still less importance that Frederic IV. did not grant the clergy and nobility of Sleswic a renewed acknowledgment of the privileges, as they desired, since he had once confirmed them in the usual way, and nothing had happened, which made such a deviation from the general rule necessary. Whatever the committee has said on this subject must be considered as totally indifferent.

The only effect, therefore, which the supposed incorporation could have had, is that of altering the succession. But it is difficult to conceive how an act of only this effect can be called an incorporation.

To the nature of an incorporation belongs, at least, that the incorporated territory should become part and parcel of that with which it was incorporated. Thus the territories of Stormarn and Ditmarschen, which have been incorporated with Holstein, have become decidedly part of the duchy; but Sleswic, as the committee itself allows,\* is not, strictly speaking, part of the kingdom of Denmark. In like manner, the committee appears to be entirely of opinion that the authority of the royal law, as such, does not extend to Sleswic; than which nothing, indeed, is easier to prove. The well-known answer of Christian VI. to the clergy and

\* Commissionsbedenken, p. 12.

nobility of Sleswic, that if he should find circumstances of such a nature as to require a convocation of the states of the duchies, he would make known his resolution,\* suffices to remove any idea of the absolute power (*Enevold-herskab*) of the royal law having, at that time, been established in Sleswic; from which it is to be inferred that an incorporation with the kingdom of Denmark has not taken place. For the royal law being the established law of the kingdom, it does not admit of any doubt,† that every country acquired by the king as king of Denmark, and incorporated with the kingdom, must be subjected to the same.

Having, therefore, in a former chapter endeavoured to prove, that *it was not the intention* of the king to incorporate the hitherto Gottorp portion of Sleswic with the kingdom of Denmark, we shall now have shown yet more clearly and explicitly, that such an incorporation *did not take place*. In the patent it was not quite distinctly expressed, with what country the incorporation was to be effected, though it was hardly possible to imagine any other than the royal portion; in the formulary of the oath of allegiance, those who took the oath were made to say, that the ducal portion was incorporated with the crown, *i. e.*, with the whole of the dominions under the king's government. Within these limits it was united to the royal portion of Sleswic, not with the kingdom of Denmark. Only the affairs of that part of the country, not those of the kingdom, as we have seen, and as the committee al-

\* *Vide Falck*, das Herzogthum Schleswig, p. 92.

† *Vide* particularly the 19th paragraph of the royal law.

lows, devolved upon the newly acquired territory. It must, therefore, appear in the highest degree probable, that what took place in all other respects, did also happen with regard to the succession ; that is to say, that the order of succession of the royal portion of Sleswic was now established throughout the duchy, but not that of the foreign kingdom of Denmark. This important question remains still to be examined.

Particular stress has at all times, and now again by the committee, been laid on the formula "*secundum tenorem legis regiae*," occurring in the oath ; the *lex regia* being considered as the Danish royal law, and the formula as the solemn pledge, by which those who took the oath bound themselves to acknowledge the succession of the royal law as the legitimate standard.

Regarding these assertions, however, we have to make the following remarks. If Frederic IV. had really had the intention of altering the law of succession in the duchy of Sleswic in the year 1721, this would, evidently, have been such an essential transformation of public affairs, that he ought clearly to have expressed his mind on the subject. But the patent, as we have seen, makes no mention of an alteration of the succession ; it does not even allude to it. The same may be said of the formulary of the oath, unless, indeed, this alteration be contained in the formula "*secundem tenorem legis regiae*." But it ill accords with this supposition, that neither the patent nor the formulary of the oath, mentions an intended alteration of the oath of allegiance, and the signification which was to be attributed to this alteration. On the contrary, the formulary denotes the oath of allegiance as

the "usual" oath, *i. e.*, as that which those who did homage were accustomed to take. If therefore, after the words "hereditary successors in the government," the abovementioned clause is introduced, which is not to be found in the oaths of allegiance, which were taken on former occasions, chiefly in the year 1684,\* it cannot, evidently, have such a meaning as would change the oath from an usual into an unusual one; least of all is it to be imagined, that the said words were intended to alter not only the usual homage, but the law of succession itself.

It certainly remains doubtful what was meant by *lex regia*, in the clause in question. Perhaps it was to denote the statute of succession of 1650; but it is just as likely, that it referred to the patent of the 22d August 1721. Important reasons have been advanced

\* This oath, which the committee does not communicate, ran thus (for the inhabitants of the town of Sleswic): "We the undersigned inhabitants of the town of Sleswic, Lollfuss, and Friedrichsberg, make known hereby: whereas, his royal Majesty of Denmark, Norway, etc., our most gracious king and lord, has, by virtue of a patent issued at Rendsburgh, under date the 30th May, been pleased to take possession of the ducal portion of the duchy of Sleswic, heretofore possessed by his Highness the Duke Christian Albert, and to unite it with his own; we do hereby, and by virtue of these presents, promise and vow, that we will acknowledge and consider his royal Majesty of Denmark, Norway, etc., as our sole and sovereign lord, be faithful and obedient to him as well as to his lawful hereditary successors in the government, and do and render whatever it is the duty of good and loyal subjects to do and to render to their sovereign king and lord. So help us God and his holy word. In witness whereof we have hereunto set our hands. Done at Sleswic this 9th day of July in the year of our Lord 1684." *Vide* Ausführlich in der Theologie und den Rechten wohlbegründetes Bedenken über zwei Hauptfragen. 1685. 4.

in favour of both interpretations.\* But though they do not, with certainty, lead to any decision, yet they are, at all events, greatly to be preferred to that explanation according to which the *lex regia* denotes the Danish royal law. For if it was to be the usual homage, as the oath declares, such an alteration as the acknowledgment of the Danish royal law would have brought about with regard to the succession, could not have been intended.

Notwithstanding all this, it is, however, possible, that the king or his counsellors, who composed the formulary of the oath, did really intend the *lex regia* for the Danish royal law, believing that the addition of such a formula, might, in some way or other, be of importance with regard to the durability of the dominion of the king and his heirs in the whole duchy of Sleswic. But surely those who took the oath, could not understand it in this sense. For although the royal law had, at the command of King Frederic IV., been published in the year 1709, and since been communicated to the German public by means of a German and Latin translation, yet there was nothing, on the present occasion, to direct the attention more particularly to the order of succession of this law; so much the less, as in the royal portion of Holstein and Sleswic another statute of succession was established, which neither had been, nor was then about to be, abolished; which had the same King Frederic III. for its author; and according to the tenor of which, previously agreed upon with the states in the year

\* *Vide Samwer Staatserbfolge*, p. 15, and *Neues Staatsbürgerliches Magazin*. Vol. ix. p. 254.

1616, the common as well as the royal subjects had hitherto done homage. If the intention and will of the king, which those who did homage were to be more particularly informed of, had been to this purpose, it ought to have been clearly pronounced. But that this has been done in any way, either verbally or in writing, is neither reported by the committee nor elsewhere. The well-known detail of the homage,\* contained in several copies of the documents relating to the diet, mentions nothing of the kind; nor have we been able to discover any such thing in any of the other accounts, which are to be found in contemporary writings. On the contrary, the report of the Sleswic homage fully confirms, that the clergy and nobility of the duchy had no idea that they were required to acknowledge another law of succession. The oath of allegiance being read and the summons given to sign it, Count Detlev Reventlau answered for himself and in the name of the Sleswic nobility, that "they had assembled most loyally to fulfil the wish of his royal Majesty, and that they were ready to render him their entire faith, zeal, and devotion, as their sole and sovereign lord." What can be more explicit? No reference is made to any alteration in the succession. The words "*secundum tenorem legis regiae*" must, therefore, at least by those who took the oath, have been differently understood from what the committee supposes; and if Frederic IV., in composing the formulary of the oath of allegiance, had really had any secret intention, which he did not think proper clearly and unequivocally to pronounce—a supposition which

\* *Vide Falck, das Herzogthum Schleswig, p. 87.*

we do not, however, consider ourselves justified in adopting—this could have had no legal effect whatever. It would, indeed, be a strange way of proceeding, to explain the words of the oath of allegiance only according to the view of him to whom the oath was rendered; it is, on the contrary, in explaining the formulary of the oath, indispensable to view it chiefly from the situation of those who took the oath; and to inquire, above all, into the well-founded opinion of those who were to bind themselves through it. But to all appearance, those who took the oath could not possibly be of opinion that they were required to acknowledge a new law of succession, of which no mention was made in the patent, and which, to say the least of it, was in the formulary of the oath itself, very equivocally and indistinctly expressed.

We have been obliged, in our inquiry, to distinguish between the patent of the 22d August 1721 and the oath of allegiance, which was taken on the 3d and 4th September. From the former we had to learn the intention of the king, from the latter the realization of this intention. It is certainly remarkable, that they do not quite agree with one another. In the patent the king speaks only of an incorporation with the royal portion of the duchy, instead of which he has used in the formulary of the oath, the word crown, which is of a far more extensive signification; in the former he merely proclaims, that he desires to receive homage as the sole sovereign lord of the country; in the latter he has added, “the royal successors in the government *secundum tenorem legis regiae*.” The first alteration has not led to any essentially different result; what the king thought to attain by the latter

addition, must remain undecided. That it was to bring about more than had been the declared intention of the king, is not probable. That in such a manner the succession of the royal law cannot have been established in the duchy of Sleswic, is perfectly clear.

VIII.—We now proceed to answer the third question, which the committee has passed over in complete silence, concerning the legality of what King Frederic IV. really executed of his intentions towards the duchy of Sleswic. Having hitherto arrived at the result, that neither an incorporation of the whole duchy with the kingdom of Denmark, nor the establishment of the succession of the royal law in the duchy of Sleswic, was either intended or realized, we might, indeed, save ourselves the trouble of answering this third question. For the asserted facts having never taken place, at least not been proved, it would appear superfluous to inquire into their legal effect. But we will put the case, though we do not admit it, that the events of the year 1721 happened, in the main, as the committee conceives and represents them; we will more especially suppose, that the *lex regia* was, according to the meaning of the king, really intended for the royal law; and ask, what would, in that case, have been legally effected thereby? Would the supposed event have been able to bring about an alteration in the public law of the duchy of Sleswic? And above all, would the agnati, who were then the lawful heirs, have been deprived thereby of their well-established right of succession? We confidently give a negative answer to these questions.

We have first to inquire, whether Frederic IV. had

at all a right to dispose at will of the conquered portion of the duchy of Sleswic? The committee finds his right of doing so in the right of war.\* Against this, it is to be observed, that the king could not, of course, have any right of war with regard to the royal portion of the duchy; nor could the joint portion be considered as a conquered territory, because it was already under the joint government of the king. Moreover, we do not find in any of the documents now extant, a single passage in which King Frederic himself appealed to the right of war. On the contrary, he has expressly declared that, "the taking possession of the ducal districts, boroughs, and towns, which had become necessary for the security of his dominions," was not to be considered as ~~an~~ hostile invasion.†

But independent of this, it must altogether be denied that, according to the existing treaties, a regular war with all its consequences, as sanctioned by the law of nations, could be entered upon between the reigning lords of the duchies. The committee, to be sure, represents the case thus, as if *Denmark* had engaged in war with the Duke of Gottorp, and as if *Denmark* had conquered the territory of the duke. But this is either a great inaccuracy of expression, or an erroneous assertion. For if anything can with certainty be ascertained from authentic documents, it is, that the king was, as Duke of Sleswic and Holstein, at variance with the Duke of Gottorp, and that he had, as duke, taken possession of the Gottorp portion of the country. All

\* Commissionsbedenken, p. 13.

† Patent of the king, of the 31st July 1714.

subjects of contest between them—the right of arms of the duke, his alliance with the Swedes, his surrendering the fortress to the Swedish general Steenbock—were chiefly viewed with reference to the duchies and their public law; the duke had erred as the participant in the Government, as the ally, bound by the treaties of union. It is this, the patent of the occupation, as well as that of the homage alludes to. But this view of the case is still more confirmed by the transactions, which were then carried on at the diet of Ratisbon. In the bill of complaint\* of the Duke of Gottorp, and in the decrees of the diet itself, it is expressly mentioned, that the king had acted as Duke of Holstein-Glückstadt;† and his Holstein-Glückstadt ambassador entered into this transaction. The kingdom of Denmark had no immediate concern with these measures.

It is, however, perfectly indifferent, whether the King of Denmark or the royal Duke of Sleswic, be considered as the warfaring party; for in neither case was a war constitutionally permitted. It might, of course, happen that one party gave some offence to the other, and affairs might take such a turn, that the offended party might consider itself justified, according to the principles of self-defence, in taking up arms, which might even lead to the expulsion of the offender; but such differences did not, according to the

\* *Faber*, XXII., p. 284—288.

† For instance, in the decree of the diet of the 25th February 1714 (*Faber*, XXIII., p. 244) we find the following words, “regarding the dominions and rights of the duke of Sleswic-Holstein-Gottorp occupied by his royal Majesty of Denmark, as duke of Holstein-Gluckstadt.”

existing treaties of union, constitute a regular war, nor did they give to either party a right of conquest. The proceedings which were to take place in such cases, were very different from those resorted to in regular wars, and subsequent conquests, sanctioned by the law of nations. According to what has been remarked before (p. 9,) the differences with Denmark should be adjusted or removed by the arbiters of the union, and those between the dukes by amicable arrangement, or through the intervention of a third party, chosen for that purpose. The way, therefore, in which King Frederic IV. had to proceed, was indicated by the constitution of the country, and by the treaties between the reigning princes, instead of proceeding by the way of conquest, and afterwards disposing of the conquered territory.

But, even supposing the case that Frederic IV. had carried on a regular legitimate war with the Duke of Gottorp—perhaps he really thought so himself\*—yet it has long since been an acknowledged principle of the European law of nations that a conquest alters only the existing state of possession. The conqueror becomes only provisional possessor of the conquered

\* The king, at least, caused to be declared at the diet of Ratisbon, the 5th May, 1713, that “he could not but consider and look upon the duke as his avowed enemy.” His words are as follows: “We find ourselves obliged to treat the country of the Duke of Gottorp in a hostile manner, and to deal with the *administrator* and his pupil as is customary with an open enemy.” *Vide* Faber, XXII. p. 254. But this declaration proves again that the king entered into hostilities as Duke of Sleswic and Holstein, for otherwise he would, doubtless, not have thus announced it to the German diet through his Holstein-Gluckstadt ambassador.

country; no rights are as yet acquired, with regard to the expelled sovereign, by the mere conquest; no rights are lost by it for the latter.\* The loss of the rights, which have hitherto belonged to the expelled sovereign, ensues only from the formal cession of the country at the conclusion of the peace. But no peace had as yet been concluded with the Duke of Gottorp in the year 1721; it was almost half a century later when that peace was established which changed the mere possession of the occupied ducal territory into an actual right for the royal line. According to the principles of the law of nations, therefore, Frederic IV. could not, at that time, consider the claim of the house of Gottorp on the duchy of Sleswic as extinct.

The sequel has sufficiently proved the accuracy of these principles, for if Frederic IV. had already in 1721 acquired an actual right to the occupied territory of the duke, how could his successors, then, have been engaged at a later period in causing the rights of the house of Gottorp to be transferred to themselves? The negotiations of the year 1750 with the younger line of the house of Gottorp which had been raised to the throne of Sweden, and those of the year 1767 with the other branches of the same house, clearly prove that the events of 1721 were legally considered as having never occurred.†

It is, therefore, self-evident that the right of succes-

\* *Martens*, Volkerrecht, s. 280. *Klüber*, Volkerrecht, s. 255 *Saalfeld*, Handbuch des positiven Volkerrechts, p. 220.

† The act of renunciation of the Grand-Duke Paul, communicated in the report of the committee (p. 13) contains the following words: "The hitherto ducal portion of the duchy of Sleswic, occupied by the crown of Denmark."

sion cannot, as the committee supposes, have become extinct by conquest.

We will, however, admit that the provisional possession of the Gottorp portion of the duchy of Sleswic, acknowledged by the powers of Europe, in a manner obliged and entitled the now only duke to adopt those measures which he took in the year 1721, that is to say, to receive homage as the sole and sovereign lord of the country. But it did, at all events, not entitle him to bring the whole duchy of Sleswic, or even the ducal portion thereof, into any closer connexion with the kingdom of Denmark than it had been before. It was only the duke of Gottorp with whom he had been contending, and whom he had accused of having neglected those duties which he owed to the king as co-reigning duke; with his own portion of the country, or with the common subjects, the king had had no dissension whatever, much less carried on a regular war; for neither the patent of the occupation, nor that of the homage, mentions anything of the kind. The contents of these two documents is simply that the duke should lose his rights, and that the subjects should render to the king whatever they had hitherto rendered to the former. Therefore, it is clear that only the rights of the duke devolved upon the king, and that the latter, having no right to alter the royal portion at all, was, even with regard to the Gottorp portion, only allowed to do as much as was requisite for the purpose of putting himself in the duke's place, and, consequently, becoming the sovereign lord of the whole instead of half the country. To make any alteration in the political constitution of the country, as by law established in favour of the kingdom of Denmark,

was out of the question. It is more especially to be borne in mind that the king could not dissolve the connexion of the duchy of Sleswic with Holstein, with which it formed one political whole, or as it was called in the language of the time a *corpus integrale*. The duke succeeded to both duchies by the same title, according to the principles of primogeniture in the male line, and the two countries were, notwithstanding their different position in other respects, most closely and inseparately united by having the same sovereign, the same diet, and various other affairs in common. The king had acknowledged this not only by confirming the privileges, but even by entering upon the government itself, for he did so only by virtue of this very title. He could not alter and abolish this. But he would have abolished it completely by incorporating the duchy of Sleswic with the kingdom of Denmark. Had he, therefore, attempted to do so, which he has not, the attempt would, for that very reason, have been without any legal effect whatever. For the same reason it would have been equally impossible to introduce here a different order of succession from that established in the duchy of Holstein. This might sooner or later lead to a complete separation of the two countries, which the king had only a short time before repeatedly declared to be unlawful. The first king of the house of Oldenburgh had chiefly been elected, that the countries might remain together; how could, then, one of his successors be allowed to abolish this union which had been preserved during all the former divisions?

But we will go yet a step further in our concessions, by supposing that it was not absolutely impossible for

the king to alter the law of succession of the duchy of Sleswic with the consent of the country, and, taking it for granted that it was the intention of the king, by the measures he took in the year 1721, to establish the succession of the royal law, and to exclude the male line in favour of the royal female line. Still we must say that these measures were by no means calculated to lead to the desired end. According to the opinion of the committee,\* the acknowledgment of the succession of the royal law for the duchy of Sleswic was duly effected through the oath of allegiance, taken on the 3rd September, 1721, by the dukes of Augustenburgh and Glücksburch, and the following day by the clergy and nobility of the duchy of Sleswic. But here again it is to be remembered that the royal portion of the duchy of Sleswic had, at all events, nothing to do with this acknowledgment, since the homage was altogether confined to the joint portion and to the private portion of the Duke of Gottorp. Besides this, the following circumstances ought to be taken into consideration: The dukes of Glücksburch and Augustenburgh took the oath of allegiance only in the quality of great-landed proprietors, and the committee itself expressly owns that the oath was not to be a renunciation of any feudal right of succession.† The oath of the two dukes had, therefore, no other signification than that of the other landed proprietors. Even if it were certain (which it is not) that Frederic IV. wanted to cause the succession of the royal law to be acknowledged by the landed proprietors in the duchy of

\* Commissionsbedenken, pp. 10, 17, and 18.

† Commissionsbedenken, p. 17.

Sleswic and by the subjects in the Gottorp districts, what would have been legally effected thereby? Would the other male branches of the house of Oldenburgh have lost their agnatic right of succession? Certainly not. In the treaty of Odensee, of 1579, the feudal right of succession of all the present and future agnati to the duchy of Sleswic was acknowledged, with the only exception of those who had expressly renounced their right by a special agreement. Through the oath of allegiance the dukes of Sonderburgh and Glücksburgh had, according to the committee's own statement, no idea of renouncing their feudal right of succession, nor were they expected to do this; consequently, they have not renounced. It would be superfluous to say any more upon this subject, as the continued validity of the feudal right of succession is so self-evident. But the opinion which the committee appears to entertain, that the homage contained at least a renunciation in favour of the female descendants of King Frederic IV. is in direct opposition to the above. If the feudal right of succession is still in force, then the female succession of the royal law, which is so totally different, can have no effect. Nor could it in any way have contributed towards abolishing the former and establishing the latter in its stead, if even a few members of that house which was entitled to succeed, had done homage to the royal successors according to the *lex regia*. For only such have done so who were at the same time great landed proprietors; a sure proof that in this quality alone the oath was both demanded and taken, and that on neither side it was considered as a renunciation.\*

\* *Vide* Michelsen, (Erste) polemische, Erörterung, p. 18.

Much less could the rights of the agnati have been affected by the supposed acknowledgment of the succession of the royal law on the part of the other persons, who were summoned to do homage. Whether they were, according to a perfectly unfounded supposition, considered as representatives of the states of the whole duchy, or as individual subjects of the expelled sovereign ; in neither case were they entitled to renounce the right of succession, appertaining to the Duke of Gottorp, or the other agnati of the house of Oldenburgh, or to exclude the male line from the succession, and to call in its stead, as the committee expresses it,\* the race of Frederic III., both male and female, to the succession in the duchy of Sleswic. The committee denotes the homage of the landed proprietors as a co-operation to this effect. If it was, indeed, intended to be such, it was completely null and void.

Independent of its being by no means clearly ascertained, that those who took the oath had any intention of excluding the male branches from the succession, or of keeping them at a greater distance in this respect, they had certainly no right to do so. However clear the intention of Frederick IV., to establish the succession of the royal law may appear, however unequivocally this intention may have been pronounced by the king in receiving the homage in the year 1721, and understood by those who took the oath ; yet the legal result remains the same. The homage done in such a manner could neither deprive the agnati of the house of Oldenburgh of their well-founded right of

\* Commissionsbedenken, p. 18.

succession nor confer any right of succession upon the female descendants of the royal line. The different branches of the house of Gottorp have, in the sequel, not failed to declare that their rights had suffered no diminution through the homage of 1721. Moreover, the continued validity of the Gottorp claim has sufficiently been acknowledged by the royal house itself; for by endeavouring, through protracted negotiations, to effect the renunciation of the dukes of Gottorp, and by causing the latter to grant it a formal renunciation, it has most unquestionably acknowledged that the Sleswic homage of 1721 was, with regard to the Gottorp right of possession and succession, an act, utterly void of any legal consequence whatever.

The inefficacy of the Sleswic homage of 1721, with regard to the right of succession of the Sonderburgh line, has (it would almost appear unconsciously,) been acknowledged even by the committee, in its statements on the feudal affairs of the Sonderburgh line.\* For it remarks that the descendants of the Duke John the younger, had, on account of their joint claim on the duchy of Sleswic and the country of Fehmarn, even after the year 1721, continued to sue for an investiture, and that such a suit had been presented so late as 1767. Though for a long time no investiture had taken place in consequence thereof, yet certificates had been given of the suits having been duly presented. These certificates, as for instance the royal reply to the suit of 1767, had contained the assurance, that the rights of the line should be secured through the suit. The committee relates these

\* Commissionsbedenken, p. 18.

facts as unconcernedly as if they were of no consequence whatever, though it is perfectly clear and does not admit of the least doubt, that they are of the greatest importance. For each certificate of that kind is an acknowledgment of the feudal quality of the country, and of the feudal right of succession of the party suing for an investiture. The feudal right of succession of the Sonderburgh line to the duchy of Sleswic having therefore been acknowledged after the year 1721, it is evident that neither the duchy of Sleswic, which, in the above-mentioned respect, continued to retain its feudal quality, can have been incorporated with the kingdom of Denmark, nor the succession of the royal law been established in the former. For a country cannot at the same time be incorporated with another, and still be considered as a feoff of the same. We will only add the remark, that if the vassal or the person entitled to be invested with a joint claim, has, at the proper time, sued for the investiture, he has done all that he is obliged to do. If a satisfactory certificate of the suit has been given, the investiture itself is for the vassal, or for the possessor of a joint claim, a matter of perfect indifference. In former times, the investiture was for the feoffer, the condition of his feudal rights; on that occasion he received the oath *of* allegiance, by which he acquired all the rights to be derived for him from the feudal faith of the feoffee. In more modern times, if a certificate, of the investiture having been sued for, has previously been given, the latter has hardly any legal signification whatever, and is, in such case, only to be considered as a solemn festival or ceremony, in honour of the feudal lord, which he may of course disclaim if he pleases. The essential part of the renewal of the

feudal rights is, therefore, in the giving the above-mentioned certificate. If the suits of the Dukes of Sonderburgh for an investiture were only followed by the answer, that the rights of the line with regard to the joint claim on the duchy of Sleswic should be secured, such a declaration could not but be considered as perfectly satisfactory. As for the investiture with a joint claim itself, we refer to the remarks which have been made relating thereto, from p. 17 to 19.

IX.—We have hitherto endeavoured to prove that the events of 1713 and 1721 could not have been intended to alter the law of succession of the duchy of Sleswic, and that even if they had been intended to do so, this intention was not carried into effect. It has, moreover, been shown that what took place was little calculated legally to establish such an alteration. The only purpose of these events was, on the contrary, that of excluding the Gottorp line from the joint possession of the duchy of Sleswic, and of securing the sole possession thereof to the royal line. This was, however, only a provisional state of affairs, as long as the house of Gottorp had not formally acknowledged it. Thus, as we have already shewn, the case was viewed by the royal line itself; and even the committee appears (though rather inconsistently,) to have considered it in the same light, in denoting the hereditary Grand-duke of Russia, as the person actually entitled to the possession, in 1773.\*

Under such circumstances, it became necessary for the royal line to consider the legal means by which this provisional state of affairs might be rendered per-

\* *Commissionsbedenken*, pp. 14 and 15.

manent ; more especially since the house of Gottorp appeared to have acquired the power of making good its claim, by the Duke Charles Peter Ulric having been called, in 1742, to the throne of Russia, and the Duke Adolphus Frederic, in 1743, to that of Sweden. We find, therefore, the royal line immediately afterwards, commencing negotiations to that effect, which, after several interruptions and fruitless attempts, led to the desired result, viz., with the Swedish line of the house of Gottorp, through the definitive treaty of the 25th April 1750, and with the Russian line, through the provisional treaty of the 22nd April, 1767, and the definitive treaty of the 1st June, 1773, and through the acts of acknowledgment on the part of the Prince-bishop of Eutin, of 1767, and of the 13th of November, 1773. The purport of these treaties being, therefore, legally to sanction the state of affairs brought about by the events of 1721, it is in itself not very likely that they should have contained something different from, or even more than this.

The report of the committee, however, attributes to the treaties of 1767 and 1773, concluded with the Russian line of the house of Gottorp, another signification, which we shall now proceed to examine more closely. The passage relating to this is as follows :—\* “The acquisition of the Gottorp portion of Sleswic, which had been made *jure belli*, and guaranteed by England and France, and which (the Gottorp right of succession with regard to the royal portion being likewise by right of war, considered as extinct,) had, in 1721, led to the establishment of the succession of the royal law in the duchy of Sleswic, was sanc-

\* Commissionsbedenken, p. 13.

tioned to this extent in 1767 and 1773, by the illustrious house of Gottorp, for ever renouncing all its claims on the duchy of Sleswic, in favour of the crown of Denmark."

With regard to this view of the case we have first to remark that the Gottorp portion, as has more fully been shown in the preceding chapter, could not be acquired by means of war, but only by a treaty of peace; secondly, that the eventual right of succession of the house of Gottorp to the whole duchy of Sleswic could, much less, be lost in consequence of the war; and thirdly, that the right of succession of the younger royal line could, least of all, be affected by the said events: a subject to which we shall presently be obliged to return. The only question therefore is, what legal effect had the treaties, which were afterwards concluded between the royal and the Gottorp line?

Till the conclusion of these treaties, the house of Gottorp had a two-fold claim on the duchy of Sleswic; first, an eventual right of succession to the whole duchy, founded on the act of election of 1460, and the descent of the Gottorp line from Christian I.; secondly, a claim on the actual possession of a part of the duchy, and on the participation in the government of the same, founded on the descent of the Gottorp line, from Duke Adolphus, who had been accepted by the states, in 1533 and 1544, as participator in the government of the duchies.

That only the latter claim has been renounced, is clearly expressed in the treaty concluded with the Swedish line, in 1750, as well as in the acts of acknowledgment of the Prince-bishop of Eutin. Only with regard to the Grand-duke of Russia, it may be

doubted, whether he did not intend through his act of renunciation of 1773, to resign the eventual right of succession to the whole duchy of Sleswic likewise.

On the one hand, it is to be observed, that the preliminary treaty of 1767 makes no mention of this eventual right of succession, but denotes the ducal portion of the duchy of Sleswic, occupied by the crown of Denmark, as the subject of negotiation, and promises a complete renunciation of this portion, as required by the king of Denmark, referring to a draught of a formal act of renunciation, which was annexed to the preliminary treaty, but has not been published. In the definitive treaty of 1773 this act of renunciation was ratified by the Grand-duke Paul, without any further statement of its contents.

Taking into consideration, that a renunciation of the ducal portion of the duchy of Sleswic was all that had been required in the preliminary treaty, and that the grand-duke cannot, reasonably, be supposed to have done more in the year 1773, than he had promised to do in 1767; moreover, that the act of acknowledgment of the Prince-bishop of Eutin,\* which was subjoined to the preliminary treaty, and according to its own statement, intended to contain the same renunciation as that of the Grand-duke Paul, unquestionably refers only to the actual right of possession of the house of Gottorp with regard to the duchy of Sleswic; and lastly, that the purpose of all these negotiations, as we have seen, was legally to sanction the state of affairs, which had been brought about by the events of 1713 and 1721;—we feel naturally inclined to suppose that the grand-duke intended only

\* *Vide* Samwer, Staatserbfolge, p. 01.

to renounce the last-mentioned claim, that is to say, that the eventual right of succession was reserved.

On the other hand it is to be considered that the act of renunciation on the part of the grand-duke, which formed the basis of the negotiations concerning the preliminary treaty, and which was expressly ratified in the definitive treaty, must decidedly be looked upon as the chief document. Even in this, it is true, the eventual right of succession to the duchy of Sleswic is not exactly mentioned ; yet the rights which the grand-duke therein renounces, are described in such general terms,\* that it must be owned, they appear to include his eventual right of succession likewise. In this case, the Grand-duke Paul and his descendants would, with regard to the succession to the duchy of Sleswic, be considered as not belonging to the house of Oldenburgh, (the descendants of Christian I.,) and be exactly in the same position as those who had “already renounced” at the time, when the treaty of Odensee was concluded.

We have, therefore, only to inquire into the effect produced by the house of Gottorp renouncing its actual right of possession concerning the duchy of Sleswic. The committee argues on this head in the following manner : that the Grand-duke Paul had renounced his claims on the duchy of Sleswic in favour of the crown of Denmark, and thereby ac-

\* *Commissionbedenken*, p. 13.—“ We do hereby and by virtue of these presents, intentionally and deliberately renounce and resign for ourselves, our heirs and descendants, all right of possession to the duchy of Sleswic, which we have hitherto had, or which may be derived therefrom, likewise all other rights, claims, and demands on the said duchy , whatever they may be, in the most solemn and binding manner,” &c.

known the establishment of the female succession in the said duchy; and that this renunciation of the Grand-duke Paul must also have affected the rights of any third person, because, with regard to a conquered territory, the cession and renunciation of the person actually entitled to the possession, was, according to the law of nations, sufficient. This person happening, in the present case, to be at the same time the acknowledged representative of the house of Gottorp, there had been no occasion for admitting the Swedish line of this house to the treaties of 1767 and 1773.

The first of these assertions of the committee, that the grand-duke had renounced his claims in favour of the crown of Denmark,\* must be contradicted altogether; for not a word is to be found in the act of renunciation to that effect. It contains, on the contrary, after the introductory part, only a complete but simple renunciation, without transferring the renounced rights to any one else; then proceeds to describe from the words, "it is, therefore, our will," the effect of this renunciation, viz., that his royal majesty of Denmark, Norway, &c., and his heirs to the crown, shall remain in undisturbed and quiet possession of the duchy of Sleswic, without any interference; and, lastly, states the engagement entered upon by the Grand-duke Paul for himself, his heirs, and descendants, neither to act themselves contrary to this renunciation, nor to permit others to do so.

Throughout the above deduction of the committee there appears the mistake of confusing, or at least tacitly identifying, the notions of *renunciation* and

\* Commissionsbedenken, p. 13.

*cession*,\* which denote two legal acts, essentially differing from each other. *Cession* is the transfer of a right on the part of its former possessor to another; *renunciation* is merely the relinquishment of the same. Even where this relinquishment happens to be in favour of a certain third person, it does not yet imply an actual cession, though, under particular circumstances, it may lead to the same result; which latter circumstance has, probably, not a little contributed towards the mistake, in considering a renunciation in favour of a third person, and a cession as essentially the same. With regard to this mistake, we have to remark that whoever acquires a right by cession, receives it immediately from its former possessor, and the title of his new acquisition is transfer; whoever, on the contrary, acquires a right in consequence of the renunciation of another, receives it certainly *through*, but not immediately *from*, the person renouncing. The renunciation only removes the obstacle which, resting in him who renounces, has hitherto impeded, as it were, that person's *own* right, who is benefited by the renunciation. In order, therefore, to acquire a right through the renunciation of another, it is requisite that he in whose favour the right is renounced, should already have an independent right of his own. This is nowhere more apparent than in the law of inheritance. The renunciation of the next heir in favour of one more distant, gives the latter an effectual claim on the inheritance only under the supposition of his being already entitled to inherit; whereas, by cession, a

\* *Vide*, Commissionsbedenken, p. 14, where cession and renunciation are immediately put together.

right of inheriting may even be transferred to a person who has not the least claim of his own on the inheritance. We are of opinion that the notions of cession and renunciation, so common in private law, can also, in public law, have no other signification than that explained in the above. But such being the case, and the act of renunciation of the Grand-duke Paul, as well as the preliminary treaty in question, repeatedly mentioning only a renunciation, without saying a word of a cession, it necessarily follows that only the effect of the former is to be admitted.\*

Nor can the circumstance of its being stated as the effect of the renunciation, that his royal majesty of Denmark, Norway, &c., and his heirs to the crown, shall remain in undisturbed and quiet possession of the duchy of Sleswic, be understood in this sense, as if it had been intended thereby to transfer the actual right of possession of the Grand-duke Paul and his descendants to the female descendants of the royal line, entitled to succeed in the kingdom, at least for the time of the duration of this line; that is to say, as if it had been intended thereby to express not only a renunciation, but a cession of the rights of the grand-

\* The history of our country furnishes several instances of both legal acts with their different effects. At the division in 1544, the Duke Frederic, the youngest brother, having been elected Coadjutor of Bremen, renounced his share, which had the effect that the shares of the other brothers became proportionably larger. But at the division, in 1564, King Frederic II. received two-thirds, and Duke John the younger only one-third, because the third brother, Duke Magnus, had not only renounced his claim, but ceded it to King Frederic.

duke. For had it been the intention to establish a real cession, it would have been necessary, according to the above explained notion of a cession, clearly and distinctly to pronounce this intention in the document; which has, certainly, not been done by merely using the expression, "and his heirs to the crown." The signification of this expression is by no means so extensive as to include *all*, even the female successors to the crown of Denmark. It has already been remarked on a former occasion, and will be referred to more at large in the appendix, that such a supposition is directly opposed to the manner in which these and similar expressions are generally used in the political writings of the eighteenth century; according to which the "heirs to the crown" are those who are called to succeed to the several countries belonging to the crown, according to their respective laws of succession. If, therefore, in these several countries belonging to the crown, different laws of succession are established, the question with regard to a newly acquired territory is, with what country has it been united? and the law of succession established in that country shall extend over the newly acquired territory likewise. The expression, "heirs to the crown," has the same signification as "hereditary successors," which is more common still, and which occurs, for instance, in the patent of the 30th May, 1684; consequently at a time when, certainly, no alteration in the laws of succession had taken place. Thus Hildesheim and East Friesland were consigned to the king of Great Britain and his successors, in the treaty of the 29th May, 1815; yet no one has ever doubted that these districts were not consigned to the female line, entitled

to succeed in Great Britain, but to the male line which was to succeed in the kingdom of Hanover. A similar case happened at the treaty concluded on the 14th February, 1842, on the part of his majesty the king of Denmark, with the Grand-duke of Oldenburgh, about the limits of their dominions, and the boundary between the duchy of Holstein and the principality of Lubec. In the 17th article of this treaty the grand-duke promised eventually to surrender a strip of country "to the crown," although it was expressly stated that the regulation of the territorial limits of the duchy of Holstein was the subject of the treaty, and it cannot be doubted that the strip of country in question was intended to be surrendered to those entitled to the succession in Holstein, but not to the hereditary successors in the kingdom of Denmark. So much the more we are obliged here, where the renunciation does not concern any foreign territory, but only the participation in the government of a duchy, forming one undivided whole, to understand the expression, "heirs to the crown," as meant to denote those entitled to succeed in the duchy of Sleswic. Should there, however, still remain some doubt in this respect, it will, at all events, be removed by the consideration that the treaties of 1767 and 1773 were not concluded with the King of Denmark, as such, but only between the two lines of the house of Holstein; that they did not, consequently, concern the kingdom of Denmark at all, and cannot, therefore, be expected to contain any stipulations in favour of the same.

The two first assertions of the committee thus proving to be without the least foundation, it will be seen

that the third, viz., that the renunciation must also have affected the rights of any third person, is equally groundless. The committee is evidently aware of its assertion, that the actual right of possession of the house of Gottorp had also been transferred to the female descendants of the royal line, being refuted by the renunciation of the Swedish line of this house expressly mentioning only the male descendants of the royal line; from which dilemma it has no other way of extricating itself than by boldly maintaining that there had been no occasion for admitting the Swedish line to the treaties of 1767 and 1773, that, on the contrary, "the act of renunciation of the grand-duke was quite sufficient for ever to preclude the claim not only of the next heirs and descendants, but of any third person likewise."

The act of renunciation itself contains nothing whatever about the rights of others being thereby intended to be surrendered; stating, as before remarked, only the engagement entered upon by the grand-duke for himself and his descendants; neither to act themselves contrary to the renunciation, nor to permit others to do so, that is to say, to undertake anything towards re-establishing the grand-duke and his descendants in their former rights.

In the preliminary treaty it was deemed indispensable that the other princes of the male line of the house of Holstein-Gottorp should also renounce their claims on the ducal portion of the duchy of Sleswic; for otherwise it would not have been promised in the treaty to persuade these princes to do so.

We are here obliged to revert to a subject already touched upon in a former chapter, viz., the assertion

of the committee, that through the events of the year 1713 and 1721, and finally, of 1773, the right of succession of the Sonderburgh line of the royal house to the whole duchy of Sleswic had become extinct. Whatever the committee has alleged concerning the political affairs of this line, is certainly not able to render this right of succession in the least doubtful.

The treaty relating to the Glücksburgh succession cannot be of any consideration, since it concerned only a certain small part of the country, but not the right of succession to the whole duchy of Sleswic. The erroneous assertions of the committee, that the right of succession of the Sonderburgh line was not solely derived from its descent, and that the effect of the joint investiture had depended on the actual possession of some feudal estate, and ceased with the loss of the same, have already been sufficiently refuted. That the Dukes of Sonderburgh have ever expressly renounced their claim, the committee does not assert. It admits, on the contrary, that the oath of allegiance, taken in the year 1721, was not meant to contain a renunciation of the feudal right of succession; moreover, that the right of succession to the whole duchy had still continued to be acknowledged till the year 1767. What, then, has since caused the loss of this right? The committee almost appears to believe that it was occasioned by the different branches of the ducal house of Sonderburgh not having taken care to secure their eventual right of succession, when the house of Gottorp was renouncing its claim on Sleswic by the treaties of 1767 and 1773. But what should have induced them to take this precaution? According to well-known principles of law, the house of

Gottorp could only surrender its own rights, but was by no means entitled to dispose of the rights of the house of Sonderburgh. There is not the least reason to suppose that the house of Gottorp was either ignorant or doubtful of the eventual right of succession of the different branches of the house of Sonderburgh, and that it had any idea of enacting anything respecting their right of succession, or of altering it in any way whatever. The treaties which were concluded concerning the duchy of Sleswic contained nothing the house of Sonderburgh could complain of; there was, consequently, no occasion for protesting against them. Nothing can, therefore, have been neglected through the silence of the house of Sonderburgh, independent of its being expressly mentioned in the treaty of Odensee, of 1579, that none of the Dukes of Sleswic-Holstein shall lose their right of succession, except by special agreement and renunciation.

The committee concludes its report with the remark, that the treaties of 1767 and 1773 have long since constituted part of the European law of nations. This is a truth which nobody will dispute, and which we are least of all inclined to contradict. But the interpretation given to these treaties ought not to be mistaken for the treaties themselves. The European law of nations records not the imagined, but the real contents of the political treaties, which, in the present case, we hope we have succeeded in illustrating. We have not been able to arrive at any other conviction than that the inferences which the committee has endeavoured to draw from these treaties are without any foundation whatever.

X.—Having thus far endeavoured to show the fallacy of the reasons alleged in the report of the committee for the assertion that the duchy of Sleswic has been incorporated with the kingdom of Denmark, or at least subjected to the succession of the royal law, we have only to consider one other circumstance, which, if it were at all able to decide any question concerning the public law of the country, would also in the present instance be of no small importance.

We are aware that an opinion is gaining ground, according to which the duchies of Sleswic and Holstein are said to be united with the kingdom of Denmark, so as to form together with the latter “one political body,” a united monarchy, or state, and to have lost thereby their separate political law, more especially their former law of succession, and received in its stead the succession of the kingdom, i. e., that of the Danish <sup>royal</sup> ~~regal~~ law.

The committee must have perceived the consequence of this question, concerning which the report contains the following statement:\* “It (the duchy of Sleswic) is not, strictly speaking, part of the kingdom of Denmark; but it forms, like Holstein and <sup>La</sup>ubenburgh (each with its peculiar political institutions), part of the united monarchy. On the other hand, it has, in common with Holstein, everything resulting from the union which has hitherto subsisted between the two duchies, and been sanctioned by his majesty.”

\* Commissionsbedenken, p. 12.

In another passage\* the committee observes, with regard to the expression "political body," occurring in the patent of the 9th September, 1806, that the different branches of the house of Oldenburgh had made no objection to this expression.

Although the committee does not pronounce any decided opinion, yet it is evidently inclined to believe that a political unity of the countries governed by the King of Denmark has really been established, and that the laws of the duchies have thereby materially been affected.

But the existence of such an unity is not to be proved without an accurate statement of the facts by which it was brought about; for, surely, a condition so directly opposed to all we have heretofore observed on the political affairs of the duchies, particularly of Sleswic, and on their connexion with the kingdom of Denmark, must have required some decisive acts to call it into life. Now, the committee gives us no account of such acts, and we should, therefore, be justified in dropping the subject altogether. We will not, however, omit briefly to notice what comes here under consideration.

Since the middle of the 17th century, and more especially since the establishment of absolute government in Denmark, it became customary, as in the rest of Europe, so also in this country, to consider the different dominions, governed by the same sovereign, as belonging together, and forming a certain, though very indefinite, unity. In this sense the expression "crown of Denmark" was used, and in speaking of

\* Commissionsbenedenken, p. 19.

Denmark and its political position amongst the other powers of Europe, in general, the royal portion of the duchies was usually included. It was the king, who carried on war, concluded peace, and regularly involved the duchies, as far as he governed them, in the affairs which principally concerned the kingdom; whilst, on the other hand, he appeared with the whole force of his kingdom to defend the interests of the duchies, or of the king, as co-reigning duke, whenever they were at stake. The same principle was also adhered to in other respects, for instance, in the administration of the public funds, which, though raised in the duchies in a different manner from that in the kingdom, were often expended for joint purposes. But all that occurred of this nature did not in the least affect the public law itself. Whenever it was necessary, legally, to distinguish between the king and the duke, it was certainly done. The numerous political writings of the end of the 17th and the beginning of the 18th century prove this in every page.

If the question is put, why this union could not be made closer still, it has already been observed on a former occasion, that, independent of the great difference of nationality and law, and independent of what had been legally established in the privileges of Christian I., it could not be done on account of Holstein belonging to the German empire and the duchies being governed by more than one sovereign.

History furnishes several instances in which such an union of different countries, founded on the circumstance of being governed by the same sovereign, has not been able to obtain the character of a real political unity, or even that of permanency, chiefly when part

of the countries belonged to the German empire, and continued to be guided by the public law of the latter. The result, however, was not always the same, but differed according to the different circumstances of the case. The Swedish possessions in Germany had been surrendered to the King of Sweden as such; yet they retained their former laws and institutions, and had only the supreme government and the law of succession in common with Sweden. This was not the case, if a German prince was afterwards called to a foreign throne, as happened to the electors of Saxony and Hanover with regard to Poland and England, which had no legal effect whatever on the affairs of their German countries. But even in such cases the German countries but too often followed the foreign kingdoms, chiefly in their relations to other powers.

Of a similar, though not exactly the same, nature was the relation of Holstein to Denmark. The first sovereign of these united countries had certainly not been called from Holstein to the throne of Denmark; on the contrary, being King of Denmark, he had, also, acquired the government of Sleswic and Holstein; not, however, as king of Denmark, but in a manner by which his new right was clearly distinguished from the former. Several of his successors have, indeed, first been dukes, and afterwards become kings; for instance, Frederic I. and Christian III. The treaties of union have had no influence on the position of the sovereign in the country.

In a very different manner was Sleswic united with Holstein. For it had, together with Holstein, a joint diet, a joint government, partly the same laws, and, what is the chief thing, since 1460 the dukes have

always succeeded to the government of both countries at the same time, by *one* title and *one* act. In the sequel there were regularly two, who had only the government in common between them; which was sufficient reason against the establishment of any real political union with the kingdom, where the king reigned alone, and with unlimited power.

This state of things underwent a considerable alteration when the Duke of Gottorp was deprived of his portion of the duchy of Sleswic and confined to Holstein; when, moreover, the joint diets ceased, and the joint government lost almost all its former signification. But the public law itself was thereby not in the least affected. The unity of the countries, which had hitherto subsisted, remained the same, even after the Duke of Gottorp had been limited to the possession of a private portion of Holstein, and to the participation in the government of this duchy, and the king had become possessed of the whole duchy of Sleswic and the rest of Holstein. Nor did the events of 1713 and 1721 alter the relation of the king to Sleswic in such a manner as to affect the political position of the country in general, for it was neither more closely united with Denmark, nor further separated from Holstein, than had hitherto been the case.

Only the vague idea of a certain unity of the countries, founded on the unity of the sovereign, may have been brought more fully into play on that occasion; and, it is well known how favourable a time for the development of such an idea was the 18th century, when all national and political distinctions vanished before the idea of princely power, comprehending and absorbing every thing. When, at that time, all the

lesser districts of the Sonderburgh line were in the same manner as previously the greater part of the Schauenburgh possessions in Holstein, and subsequently the county of Ranzau, acquired by the royal house ; when at last even the ducal portion of Holstein passed, by amicable settlement, into the hands of the king ; when, at the same time, the confederation of the German empire lost more and more of its former signification, and the exercise of princely power in the separate territories became, gradually, less constrained, it could easily happen that the duchies, united with each other, were, likewise, brought into closer connexion with the kingdom of Denmark, or, at least, considered so. No foreign power was likely to interfere as far as Sleswic was concerned. We have seen the endeavours which were made in Denmark at an earlier period to obtain a compensation for the abolition of the feudal dependence of Sleswic, by establishing in other respects a somewhat closer connexion between this duchy and the kingdom. Also at this later period some measures of that kind were taken ; it appears to have sometimes been forgotten that the duchy was not possessed by the king as King of Denmark. It is, however, to be observed that nothing happened to loosen the connexion with Holstein ; on the contrary, Sleswic served as a handle to draw Holstein likewise into the same union. But the greatest stress is to be laid on the circumstance, that no decided step was ever taken to alter the constitution of the country as by law established ; to abolish, for instance, the treaties of union, and to introduce in their stead another political tie. Whatever alterations took place concerned the manner of viewing the existing state of

affairs rather than the affairs themselves. Everything was left to the gradual working of time. But, although time be able to cover and to cast into oblivion many things, yet it cannot destroy rights which remain practical in all essential respects.

We are not aware that the idea of a real political unity between Denmark and the duchies has ever been acted upon in the last century, in arranging the affairs of the interior. For, although the administration of the finances and of some other affairs was, in the course of time, united, yet the difference always preponderated; the supreme government remained separate, all ordinances were issued separately for the kingdom and separately for the duchies, and whatever was arranged in common did not ~~a~~ffect the existing treaties of union and the political independence of the duchies.

In the patent of the 9th September, 1806, which was intended to settle the affairs of Holstein after the fall of the German empire, the following passage occurs: that Holstein "shall be united with the whole political body of the monarchy, subjected to our sceptre, so as to form, in every respect, an inseparate part of it." With regard to the word sceptre, we refer the reader to what has already been remarked on this figurative expression, which was used in the same signification as "crown." In this respect the patent contains nothing new. But also the expressions "political body" and "monarchy" are unobjectionable if they are only understood in the right sense. At all events the agnati, entitled to succeed in the duchies, had no occasion to protest against these expressions, as they could, certainly, not prejudice their claims in any way.

The only word which, in the original construction of the patent, caused them some apprehension, viz., the expression that Holstein should form an “*inseparable*” part of this political body, is known\* to have been altered at the request of the Duke of Augustenburgh, when, instead of “*inseparable*” the word “*inseparate*” was put, which has, indeed, hardly any signification at all, and merely implies that the only political engagement, which Holstein has at present entered into is with its sovereign.

Holstein has since joined the German Confederation as a “*sovereign*” duchy, which all the states of the German Confederation are, and must be, according to the fundamental law of the German Confederation.

At the same time the union with Sleswic has been preserved just as it was before. It may be difficult to find an adequate term by which to denote the exact relation of the two duchies to each other. Some early writers, employed by the crown, have called them a *corpus integrale*, and said that they must always remain together undivided. This, or any corresponding expression which might now-a-days be chosen instead, would appear to us perfectly satisfactory. They are two countries independent of each other, and in several respects differing from each other in their history as well as their laws; but they have been closely united for 400 years, and their union is firmly based on a definitive law.

They have been just as long with the neighbouring kingdom of Denmark under the same reigning house,

\* *Vide* Widerlegung des Aufsatzes in der Berlingschen Zeitung. Hamburg, 1837. p. 37.

and first partially, then completely, under the same sovereign ; which has brought them, of course, in various ways, into closer connexion with the kingdom, and caused them, more especially in the general affairs of Europe, to form together with Denmark the force of their joint sovereign.

Having hitherto endeavoured to explain from the particular history of our countries, what signification an expression like “ political body ” has for the territories, belonging to the King of Denmark under different titles, we shall now proceed to examine the question, whether the transactions and treaties of the powers, which restored the law of nations and the public law of Europe after the fall of the Napoleon dynasty, contain anything that gave to the then established or acknowledged union of different dominions and countries under one sovereign, the character of permanency, or of a real political unity. For it may, indeed, be supposed,—and there are many who entertain such a view—that those treaties, which were intended to secure the peace of Europe, “ *par le rétablissement d’un juste équilibre de forces*,”\* settled the state of possession of the European powers for ever, by a just distribution of power, and, in so doing, precluded the possibility of an alteration of the territorial arrangements, thus agreed upon, as likely to disturb the balance of power. But such a supposition would disparage the sense of justice, as well as the discernment of the high authorities, who arranged these affairs.

\* In the treaty of Chaumont, dated the 1st March, 1814. *Vide* Martens, *Recueil des principaux traités*, Supplem. V. p. 684.

We do not intend here to discuss those alterations, which, caused by revolutionary movements, have been succeeded by some modifications of the state of affairs, established in the year 1815. In such cases, the five great powers, acting as representatives of all the powers of Europe, have availed themselves of the expedient of making new treaties, in order to remove the difficulties and inconveniences arising from the former condition. The separation of Belgium from the Netherlands, the union of which was, in 1815, considered of such great importance, has neither disturbed the peace of Europe, nor made any further alteration in the general state of possession necessary, in order to restore the balance of power.

With regard to our question, it is of consequence that the transactions of 1815 contain nothing whatever to prove the establishment of the principle, that the well-founded right of succession of certain princely families to certain territories, should, in favour of the then existing state of possession, be considered as extinct. On the contrary, at the congress itself, and in all transactions concerning these affairs, the principle, that any such right, unless expressly abolished, should remain valid in all its bearings, has strictly been adhered to. The establishment, or one might say, the constitution, of the political system of Europe, is so far from being founded on the balance of power alone, that even the dominions of the great powers, as we are able to prove by an important example, are not exempt from the effects and consequences of the right of succession. When the different right of the male and female succession was to separate the crowns of Great Britain and Hanover, which, in

foreign affairs at least, had acted as one power, chiefly in the latter period of their union ; the question whether, and how, the separation might be prevented, in order to maintain the existing state of affairs, was not even mooted ; and the separation took place, though Hanover had, in 1815, been considerably enlarged through its very connexion with England, and through the influence of this kingdom, governed by the same sovereign, in order to indemnify the English government for certain sacrifices and services,\* rendered by the same. The cabinet of Saint James's never thought of claiming the thus acquired territories for the crown of England.

This instance clearly proves that the principles, according to which the political treaty of 1815 was concluded, cannot materially have altered the relation of the duchies of Sleswic and Holstein to the kingdom of Denmark, and that, more especially, no right can have been conceded to the king of Denmark, as such, to possess the duchies for ever. Nevertheless, the expression "united monarchy," or "state," is often used since that time, in speaking of the whole of the countries under his sceptre, and we are therefore induced to explain in a few words the signification which is to be attributed to these and similar expressions. For an idea appears to be gaining ground, that instead of merely denoting historical results, they contain political principles, and involve not only the right, but the duty, to draw from them

\* We remind the reader of the negociations of England with Prussia in the spring of 1813 in which the cabinet of St. James's made it a condition of the payment of its subsidies, that Eastfriesland, Hildesheim, Goslar, &c. should be ceded to Hanover.

such inferences, as even the positive law must submit to.

The committee, also, appears to believe that because the countries governed by the King of Denmark, form one "united monarchy," any right, which might lead to a separation of the same, ought to be considered as extinct. This is the last argument that can possibly be opposed to the independent law of succession of the duchies; and any one interested in the case, would certainly have felt obliged to the committee, if it had, with clearness and precision, developed its ideas on this head. It has, however, preferred to touch upon the subject in the slightest possible manner.

Public law has not yet positively and definitively fixed the signification of the above expressions, whatever inducement it may have, just at present, in the political affairs of Europe, to settle this question. Some attempts have, certainly, been made, which, however, it would lead us too far, to submit to a more minute examination ; for they have only convinced us that it is altogether impossible to establish a satisfactory definition of a "united monarchy" or "state." The only thing really inherent in these expressions is, that kind of union by which several countries belonging to the same monarchy or state, are considered as a whole, and, for the time being, acknowledged as such by the law of nations. But the forms of such an union may be of an infinite variety, none of which can claim for itself the right of being considered as the exclusive form of a united monarchy. If the state be only *united*, so as to form a *whole* with regard to other states, the manner, or *duration*, of this union, is of no consequence. No theory can predetermine

the latter for a special case ; but as the law of nations acknowledges the existing union, so it is the positive law, and the historical events and circumstances, from which this union derives its particular form.

No light is, therefore, thrown on the subject of our inquiry by the idea and expression of a united monarchy, or a united state ; and it speaks neither for nor against an independent law of succession of the duchy of Sleswic, that the countries governed by the King of Denmark are sometimes called by the above appellations. However, if we were overscrupulous in explaining these expressions, (which we do not intend to be,) we should arrive at a conclusion, almost directly opposed to the view of the committee. For the idea of a united monarchy implies an acknowledgment of a certain political independence of the different countries, thus united, and in so far differs from that of a state, which is uniform in all its parts. Such a state, as for instance France, can never be called a *united* monarchy, which expression is only applicable to states like Austria or Russia. In some of these, the same law of succession is established throughout ; but it cannot be said, that this must necessarily be the case, or in other words, that a united monarchy forms an indissoluble whole.

From all this it is clear, that neither certain historical events, nor any positive and legal stipulations, have established a real political unity of the countries governed by the King of Denmark, and that neither the treaty of 1815, nor the science of politics assign, to the expressions of “ united monarchy” or “ state” any such signification, by which the existing law of succession of the duchy of Sleswic could in any way be

affected. It is clear that the political system of Europe is by no means alone founded on the doctrine of the balance of power, but at the same time, and much more so on legitimacy ; that is to say, on the acknowledgment of the inviolability of those rights by virtue of which not only the present sovereigns wear their crowns, but also the future ones will do so, while right is right.

## APPENDIX.

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*On the signification of the word "Crown," in the  
Seventeenth and Eighteenth Century.*

THE expression, "crown" and "crown of Denmark," being of peculiar importance for the political affairs of the duchy of Sleswic, it appears necessary to inquire somewhat more minutely into the meaning of this word in general, as well as in particular regard to the questions under our present consideration.

It is evident that the word has originally a certain figurative signification ; the crown being an emblem of the right it imparts, of the realm to which it relates, and of the person by whom it is worn. At an earlier period the words, *realm* and *crown*, were often used together, the former denoting the territory, the latter the rights, connected therewith, and founded thereon. One of the earliest instances which the documents of our country afford, is to be found in the treaty of union of the year 1533, "thosprake und vormeende gerechticheit alze de *Crone* und dat *ryke* tho Denne-

mark hebben mochten edder konnden tho dem furs-  
tendome Sleswick" (Privilegien, p. 137); and another  
in the treaty of Odensee of the year 1579, "da es des  
*Reichs* und der *Crohn* Dennemark bessere Gelegenheit  
wäre." (Hansen, Staatsbeschreibung, etc., p. 623.)  
Similar expressions are not unfrequently to be found  
even at a later period.

In the treaty of Odensee, and in the bill of enfeoff-  
ment of King Frederic II., the duchy of Sleswic is  
set down as a feoff of "the kingdom of Denmark;"  
but soon after it was usually called a feoff of the  
"crown," or of the "crown of Denmark," as it con-  
cerned the right, founded on the country, rather than  
the country itself. Thus *Faber* (Staatskanzlei, xi. p.  
39) records the following words of the year 1624, "on  
account of the duchy of Sleswic being a feoff of the  
crown of Denmark;" and the bill of enfeoffment of  
King Frederic III. of the year 1649, in speaking of  
the duchy of Sleswic, says, "which is held in feoff  
from us and the crown of Denmark, as a princely  
hereditary feoff." (Hansen, p. 656.) In like manner a  
letter of King Christian V. of the 19th December,  
1676, calls the duchy of Sleswic, "a feoff of our crown  
of Denmark," and the treaty of Copenhagen of the  
2nd May, 1658, mentions "all the islands and ap-  
purtenances thereunto belonging, and dependent upon  
the said crown. (Hansen, p. 663.)

If the treaty of 1533 speaks only of the "realm"  
or "kingdom of Denmark," for which the union with  
the duchies was established, the treaty of 1623 regu-  
larly employs the expression "crown;" for instance,  
"between the Kings of the crown of Denmark and the  
Dukes of Sleswic-Holstein," etc. (Hansen, p. 645), and

“ the crown of Denmark with the duchies of Sleswic and Holstein.” (Ibid. p. 650.) “ That this treaty between the duchies of Sleswic and Holstein, and the crown of Denmark, shall always be renewed and reconfirmed by our heirs and successors, at the beginning of their reign.” (Ibid.)

As in the first of the above-quoted instances, so we frequently find the king and the crown placed together, the former as the temporary representative and protector of the realm, the latter as denoting the perpetual rights of the same. *Vide* the peace of Lubeck of the year 1629, “ without any derogation from his Majesty’s honour and dignity, and his crown of Denmark,” and “ the sovereign and feudal rights, belonging to the above-named countries.” *Extensio* unionis of the year 1637, art. I., “ it is our will, that the royal dignity, and the crown of Denmark and Norway,” etc. Patent of sovereignty of the year 1658, “ neither we, nor any of us and our successors in the government, nor this crown, shall have any pretension to, or claim on, the said duchy of Sleswic.” (Hansen, p. 671.)

In the sequel the word crown generally signified the king himself, the dignity or the right, or, more properly speaking, the emblem of the dignity being used instead of the person. This signification is already apparent in the following vivid expressions: “ The crown of England, powerful by land and by sea.” Declaration of the empire. (Faber, VIII., p. 641.) “ The mighty crown of France, always thirsting after new countries and dominions.” Statement of the Netherlands of the year 1710. (Faber XV., p. 642.) “ The crown of Denmark, ever pregnant with hostile designs

against the crown of Sweden." Swedish Memoir. (Faber, XIX., p. 384.) The following passages can only be understood in the above-mentioned sense: "Some attempts of this kind were made on the part of the crown of Denmark, even during the Danish occupation of the territory of Bremen." (Faber, XIX., p. 301.) "The crown of Denmark did not order the troops to pass over from Jutland to Zealand." (Ibid. p. 340.) "His Imperial Majesty, the crowns of Great Britain and Prussia, the Elector Palatine, and the Elector of Brunswic assembled in council with the States-general at the Hague." (Ibid. p. 206.) "On account of being connected, through marriage, with the crown of Sweden." (Ibid. XXVII., p. 514.) "In consequence of the consanguinity, existing between the duke and the crown of Sweden." Peace of Stockholm of the 3d June 1720.

The word crown being thus used instead of king, the same expression is likewise employed when the king acts in any other quality but that of king. The sovereign is always called by the highest title belonging to him; and in the transactions of the German empire, as well as in other German affairs, the kings of Prussia, Denmark, Poland, and Great Britain, are constantly introduced as such, though with regard to their German countries, they ought only to have borne their German title. But it being once the custom to use the word crown instead of king, it was also adhered to in these cases. Thus the crowns of Poland and Denmark are mentioned in a memorial of the Duke of Mecklenburgh, presented to the imperial diet of 1712. (Faber, XXI., p. 368.) In the year 1715, the King Frederic IV. concluded with the King of

Great Britain a treaty, which chiefly concerned the cession of the districts of Bremen and Verden to the latter. It cannot be doubted, that the King of Great Britain acquired these districts, and acted only in his quality of Elector of Hanover. At the beginning of the hostilities against Sweden, he caused the following declaration to be made at the imperial diet : that, “ His Royal Majesty of Great Britain had, as elector of Brunswic and Luneburgh, no longer been able to forbear entering into war with his Majesty the King of Sweden ;” (Faber, XXVI., p. 621 ;) and afterwards he expressly stated, that “ he was not engaged in war with Sweden, on account of his kingdoms.” (Ibid. XXIX., p. 352.) Nevertheless, he is always called, in the treaty, by the title of King of Great Britain, and in Art. the 16th he even promises “ to use, if requisite, all the power of the crown of Great Britain, to prevent,” etc. In like manner, there are innumerable instances, in the official as well as private writings of that time, of “ the crown of Denmark, its measures, actions,” and the like, being mentioned in cases in which the king acted only in his quality of Duke of Holstein, or of Sleswick and Holstein. So in the affairs relating to the bishopric of Lubec, (Faber, II., p. 71 ; X., p. 654, and in many other places,) and to the city of Hamburgh. (Ibid. XX., p. 212.) The emperor discriminated well in this respect, in saying, “ The complaints preferred against you, well-beloved cousin, as Duke of Holstein, in which quality they originated.” (Faber, XXI., p. 422.) We have already quoted a passage, in which it is stated with the same clearness and precision, that in the contest with the house of Gottorp, the king acted in his quality of Duke

of Sleswic and Holstein; which he, moreover, sufficiently acknowledged by entering into all the negotiations concerning this affair at the imperial diet. Some of the Gottorp writings, therefore, speak only of the Holstein Gluckstadt measures, or they use expressions like the following: "On the part of his majesty the king of Denmark and Norway, reigning at the same time as Duke of Sleswic-Holstein-Gluckstadt, in his portion of the said countries." (Nochmalige und endliche Behauptung, § 4, and § 11.) But the writings of all parties speak, even here, more frequently of the crown of Denmark; for instance, "as for the favour and kindness bestowed on the ducal house by the crown of Denmark, it might easily be proved, that on this side no means have ever been spared to oblige the crown of Denmark, and to secure its friendship." (Faber, XXIV., p. 561.) "Even supposing all the imputations alleged by the crown of Denmark against the ducal house and the prince-bishop to be true; yet the crown of Denmark would have no right to—" (Faber, XXV., p. 301.) The same expression occurs, where matters are treated of, relating entirely and exclusively to the duchies, as for instance the taxes of the states, and the like. Thus the arbiter's sentence, pronounced on the guardianship of the administrator, contains the following, "that his serene highness, the administrator, had ceded several points to the crown of Denmark."

After these explanations, it will not appear surprising, if the whole of the countries, governed by a king, is designated by the word "crown," although they may not, actually, form part of the kingdom itself. We can easily trace the application of this term

to the countries, which the king of Sweden possessed in Germany. They are called "the German provinces of the crown of Sweden; (Faber, XXVI., p. 609; XXXII., p. 740;) and expressions like the following, "the crown of Sweden on the part of its countries situated in Germany," (Ibid. XV., p. 624,)—"to expel the crown of Sweden from the German soil," (Ibid. XXVIII., p. 484,) are of frequent occurrence.

These countries, which remained in full possession of their independence and their constitution, are next said to be incorporated with the crown, and even with the kingdom of Sweden. Treaty between Sweden and Gottorp of the year 1661, Art. I., "The crown of Sweden, and the provinces belonging to, and incorporated with, the same." (Der verbesserte deutsche Fürstenstaat. Erfurt 1677, Supplem. C.) Manifesto of Steenbock of the 1st November 1712, "The kingdom of Sweden itself as well as the provinces incorporated with it. (Faber, XX., p. 334.) Lastly, the crown of Sweden is said to be a member of the German empire, "When the crown of Sweden was not yet acknowledged and admitted as a member of the holy Roman empire," (Faber, XIX., p. 401,) and the inhabitants of other German countries, as those of Mecklenburgh, are called "neighbours of the crown of Sweden." (Faber, XXI., p. 452.)

Although the country which the king of Denmark possessed in Sleswic and Holstein, does not exactly stand in the same relation to Denmark as Bremen, and Verden, and Pomerania did to Sweden, still it is by no means surprising, that it is, in like manner, spoken of as a country belonging to the crown of Denmark, and included in the signification of this expression.

Till the middle of the 17th century, as we have seen, the duchies were regularly distinguished from the crown of Denmark; but at the end of the 17th and the beginning of the 18th century, they were just as often comprised in this general term. As it was then customary to speak of "the German countries, belonging to the kingdom of Denmark," (Faber, XV., p. 628,) of "Danish Holstein," (Faber, XV., p. 651; XXII., p. 329,) of "the German provinces of Denmark," (Ibid. XV., p. 652,) so it was equally the custom, to call them countries of the Danish crown, or of the crown of Denmark; for instance, "*quod corona Danica in sua ducatum Slesvico-Holsaticorum parte.*" (*Actor. publ. fasc. VI.*, p. 26.) "The countries and inhabitants of the said crown of Denmark,"—Patent of the Swedish general Gyldenstern. (*Actor. publ. fasc. VI.*, p. 26.)

To remove all doubt concerning the manner in which the word crown was used in the 18th century, we quote the following passage from the treaty of the 21st January 1713, concluded between the administrator of the Gottorp portion, and the general Steenbock: "Wherefore the district of Segeberg and the county of Pinneberg were surrendered and ceded to them by the crown of Denmark." (Faber, XXIV., p. 524.)

It appears from this, that the expression "crown of Denmark" was at that time not applied exclusively to the kingdom, but also to the countries which the king of Denmark governed in another quality, and which either belonged to the German empire, or were perfectly independent. If, therefore, the king is said to have incorporated a certain territory with his crown,

but at the same time, to have united it with one of the countries, situated beyond the limits of the kingdom, it is clear, that this cannot have been an incorporation with the kingdom ; but only an union with the whole of the countries under his dominion.

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